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Legend:

Company	=
Managing Member	=
Bank A	=
Bank B	=
Date	=
State	=
Figure a	=
Figure b	=
Figure c	=
Figure d	=
X	=
Y	=

Dear :

This is in response to the letter submitted by your authorized representative, requesting rulings on the application of certain sections of the Internal Revenue Code (the "Code") to a transaction among the Company, the Managing Member, Bank A, and Bank B.

FACTS

PARTIES

The Company is a limited liability company that was initially formed by the Managing Member in Date under the laws of State. The Company is governed by a limited liability company agreement (the "Agreement") and it is taxable as a partnership for federal income tax purposes. The Company currently has three member-partners: Bank A, Bank B, and the Managing Member.

Bank A is a national bank. Bank B is regulated as a financial holding company by the Federal Reserve Board.

The Managing Member designed and created the transaction that is the subject of the ruling request. The Managing Member is in the business of providing audit, reconciliation, placement, and advisory services to banks in connection with bank owned life insurance ("BOLI") plans.

TRANSACTION

Background

Bank A and Bank B (collectively, the "Banks") own life insurance policies on the lives of current and former employees ("Policies" and each a "Policy"), which were acquired from various U.S. life insurance companies ("Issuers" and each an "Issuer") as an investment to finance various employee benefits, including general welfare and non-qualified executive compensation plans. Some of the Banks' Policies are general account life insurance policies ("General Account BOLI"), which means that the policies are obligations of the Issuer' general account and typically this kind of policy provides for the crediting of interest on policy cash values at the rate or rates periodically declared by the Issuer. The interest crediting rate cannot be set below a statutory minimum guaranteed rate.

Some of the Banks' Policies are separate account life insurance policies ("Separate Account BOLI"), which means that the policies are variable life insurance policies, under which assets used to support the policy are held in one or more life insurance company separate accounts. Under a Separate Account BOLI Policy, contract cash values and death benefits fluctuate with the performance of the underlying assets in the separate account(s).

The Banks claim deductions for interest expense incurred on indebtedness that is unrelated to the purchase and holding of the Policies (“Unrelated Interest Expense”).

Transfer of BOLI Policies to Company

The Banks will transfer some of their respective General Account BOLI and Separate Account BOLI to the Company. The transferred Policies will cover both current and former employees of the Banks. In the future, it is intended that other banking institutions also transfer Policies to the Company and become members of the Company. Under the Agreement, the Policies (and any future Policies transferred to the Company) must meet certain requirements: (1) The date of the transfer to the Company must be at least five years after the date the Policy was originally issued and (2) the insured under the Policy must have been provided notice of the coverage and consented in writing.

The Banks must also make certain representations to the Company. These include a representation that a Bank will not use the transfer of the Policies to the Company as the basis for increasing the investment in BOLI policies permitted under bank regulatory rules governing bank investments in BOLI.

The Banks will transfer the Policies to the Company solely in exchange for "Membership Interests" therein (which are partnership interests for federal tax purposes) and the Banks will become "Members" of the Company. Only banks will be permitted to transfer property to the Company and become Members. It is anticipated and intended that a number of other banks will participate in the Company and transfer BOLI policies to it. In that event, the relative membership percentages of Bank A and Bank B will be reduced as Policies from other banks are contributed to the Company, such that it is likely that no member of the Company would have a membership percentage in excess of 50 percent.

In the transfer, the Company will acquire all ownership rights in the Policies and will be listed as the owner and beneficiary of the Policies on the books and records of the Issuers.

Immediately after the transfer of the Policies in exchange for Membership Interests, each Bank will possess a stated percentage interest in the total capital and profits of the LLC. At that time, Bank A will transfer Policies with an aggregate cash surrender value (net of any applicable surrender charges) of Figure a and an aggregate face amount of Figure b. Bank B will transfer Policies with an aggregate cash surrender value (net of any applicable surrender charges) of Figure c and an aggregate face amount of Figure d. Based on this, Bank A will receive an approximate interest in the capital and profits of Company of X percent (which is in excess of 50 percent), and Bank B will receive an approximate interest of Y percent (which is less than 50 percent) in the capital and profits of the Company. The identity of the specific Policies that will

be transferred to the Company (and their specific face amounts) will be determined immediately before the transfer based on market conditions and other factors at the time of the transfer.

Company operations

The Company will be managed by a management committee (the "Management Committee"), which, in turn, will appoint a managing member (the "Managing Member"), who will have specialized expertise in the management of BOLI. The Managing Member and the Management Committee will manage the Policies for the benefit of the members. As part of this responsibility, the Managing Member and the Management Committee will assess how contract values should be allocated and reallocated among available separate account investment options, in the case of Separate Account BOLI.

In addition, the Managing Member and the Management Committee will review all of the Policies and determine whether any or all should be disposed of or replaced. If the Managing Member and Management Committee decide to replace Policies with new life insurance policies, they will select a suitable issuing life insurance company (or companies) and negotiate the terms of the new Policies with the issuing life insurance company on behalf of the members. The Banks and the Company anticipate that the Management Committee will likely act to replace a substantial portion of the Policies (perhaps even all of the Policies) with new Policies. Any decision about whether to retain or replace a particular Policy will be made by the Management Committee after its transfer to the Company.

The Managing Member and Management Committee will also administer the Company's Policies, tracking rates of return and undertaking necessary recordkeeping and monitoring of the contracts. Periodic reports will be issued to the Banks.

All profits and losses of the Company will be allocated pro rata among its member banks. Thus, when an insured under a Policy dies, the death benefit would be collected by the Company and distributed to the Banks in accordance with their then current percentage interest in the capital and profits of the Company (their "Membership Percentage").

Membership interests in the Company will not be redeemable and will not be transferable without the consent of the Managing Member, which ordinarily will not be given except in rare and extraordinary circumstances. If a transfer is authorized, the transferee must be a banking institution.

It is conceivable that the Company could incur interest expense on indebtedness that is unrelated to the acquisition and holding of Policies ("Company Unrelated Interest Expense"), although it is not anticipated that the Company will borrow any material amount of money.

Purpose of the transaction

The purpose of the transaction is to provide Banks with a more effective, centralized way to manage Policies and, where appropriate, to negotiate the terms of new Policies (i.e., via exchange) or renegotiate the terms of existing BOLI holdings.

ADDITIONAL REPRESENTATIONS

The Company makes the following additional representations:

1. The Policies constitute, and have always constituted, "life insurance" for federal income tax purposes.

2. Separate Account BOLI Policies are "variable contracts" within the meaning of section 817(d), and the segregated asset accounts on which such Policies are based have at all times been adequately diversified within the meaning of section 817(h) and the regulations thereunder.

3. The Policies at issuance, and upon transfer to the Company, meet all applicable state insurable interest laws.

4. An exchange of a Policy by the Company for a new Policy in a “section 1035 exchange” will comply with any applicable state insurable interest laws.

5. At the time of a transfer to the Company, each Policy is a life insurance policy described in section 264(f)(4)(A).

6. Bank A’s capital and profits interest in the Company will exceed 50 percent, until additional banking institutions join the Company.

7. Bank B’s capital and profits interest in the Company will be less than 50 percent.

8. The Company is engaged in a trade or business for federal income tax purposes.

9. The Company is not characterized as a regulated investment company (“RIC”) or real estate investment trust (“REIT”) under the Internal Revenue Code (the “Code”) or under the Investment Company Act of 1940 (the “1940 Act”).

REQUESTED RULINGS

Company requests the following rulings:

1. The transfer of the Policies to the Company would not be treated as a transfer to an investment company, within the meaning of section 351, if the Company were incorporated.

2. A Member's allocable share of Company Unrelated Interest Expense, to the extent allocated to unborrowed cash values of Policies held by the Company, may not be deductible by such Member pursuant to section 264(f)(1).

3. Under the aggregation rule in section 264(f)(8) Bank A and the Company will be treated as “1 taxpayer, while Bank B and the Company will not be treated as “1 taxpayer.”

4. Deductions for a portion of Bank A's Unrelated Interest Expense may be disallowed under section 264(f)(1).
5. Deductions for Bank B’s Unrelated Interest Expense will not be disallowed under section 264(f)(1) on account of the Company holding Policies with unborrowed policy cash values.

6. Any Policy held by the Company, under which the Company is the beneficiary: (a) will not constitute an "employer-owned life insurance contract" within the meaning of section 101(j)(3)(A) if the Policy covers the life of an insured who, on the date the Policy is issued, is an employee of Bank B and not the Company; (b) will constitute an "employer-owned life insurance contract" within the meaning of section 101(j)(3)(A) if the Policy covers the life of an insured who, on the date the Policy is issued, is (i) an employee of the Company, or (ii) an employee of Bank A.

LAW AND ANALYSIS

Ruling Request 1

Section 721(a) provides that no gain or loss shall be recognized to a partnership or to any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership.

Section 721(b) provides that section 721(a) shall not apply to gain realized on a transfer of property to a partnership which would be treated as an investment company (within the meaning of section 351) if the partnership were incorporated.

A transfer of property is a transfer to an investment company if (i) it is a transfer to a RIC, REIT or a corporation more than 80 percent of the value of whose assets is held for investment and is stock and securities (the “Transferee Test”), and (ii) the transfer results, directly or indirectly, in diversification (the “Diversification Test”). The Transferee Test and Diversification Test are independent and both must be satisfied in order for a transfer to be considered a transfer to an investment company. In this case, the Transferee Test will not be satisfied if the only assets (other than minimum cash) of the Transferee are the Policies.

Therefore, the transfer of the Policies to the Company will not be treated as a transfer to an investment company (within the meaning of section 351) if the Company were incorporated and, consequently, section 721(b) does not apply to the transfer of the Policies to the Company.

Ruling Request 2

Section 264(f)(1) states that “[n]o deduction shall be allowed for that portion of taxpayer’s interest expense which is allocable to unborrowed policy cash values.”

Section 264(f)(5)(B) states that “[i]n the case of a partnership or S corporation, [section 264(f)] shall be applied at the partnership and corporate levels.”

Since the Company is a partnership and it holds Policies with unborrowed cash value, some portion or perhaps all of any Company Unrelated Interest Expense should be allocable to unborrowed cash values. A deduction for Company Unrelated Interest Expense allocable to unborrowed cash value would be disallowed under section 264(f)(1). However, the Company, as a partnership, does not itself claim deductions; instead deductions are claimed at the level of the Members. Therefore, a Member's share of Company Unrelated Interest Expense, to the extent allocable to unborrowed cash values of Policies held by the Company, is not deductible by such Member pursuant to section 264(f)(1).

Ruling Request 3

Section 264(f)(8) states that “[a]ll members of a controlled group (within the meaning of [section 264(e)(5)(B)] shall be treated as 1 taxpayer for purposes of [section 264(f)].” Section 264(e)(5)(B), in turn, states that "all persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as members of a controlled group.”

Section 52(b)(1) states that in the case of partnerships that are under common control “all employees of trades or business (whether or not incorporated) which are under common control shall be treated as employed by a single employer.”

Section 1.52-1(c)(1) of the Regulations states that in the case of a "parent-subsidiary" arrangement a chain of organizations are under common control if they are connected through ownership of a controlling interest with a common parent organization. Section 1.52-1(c)(2)(iii), in turn, states that in the case of a partnership, a partner owns a controlling interest in the partnership if the partner owns more than a 50 percent profit or capital interest in the partnership.

The Company has specifically represented that it satisfies the requirements of section 52 of the Code and section 1.52-1 of the Regulations because Bank A will have a Membership Percentage exceeds 50 percent and that Bank B, conversely, will have a Membership Percentage that is less than 50 percent. Based on this representation, under section 264(f)(8)(A) Bank A and the Company will be treated as “1 taxpayer” for purposes of section 264(f), while Bank B and the Company will not be treated as “1 taxpayer” for such purpose.

Ruling Request 4

Bank A represents that it incurs substantial interest expense deductions every year that are unrelated to the purchase or carrying of the Policies or the acquisition and holding of its Membership Interest in the Company.

Section 264(f)(1) states that “[n]o deduction shall be allowed for that portion of taxpayer’s interest expense which is allocable to unborrowed policy cash values.”

Section 264(f)(5)(B) states that “[i]n the case of a partnership or S corporation, [section 264(f)] shall be applied at the partnership and corporate levels.”

In connection with Ruling Request 3 we held that under the aggregation rule in section 264(f)(8) Bank A and the Company will be treated as “1 taxpayer,” while Bank B and the Company will not be treated as “1 taxpayer.”

Based on the Company’s representations and the holding in connection with Ruling Request 3, a portion of Bank A’s Unrelated Interest Expense may be disallowed under section 264(f)(1) because of the unborrowed policy cash value of the Policies in the Company.

Ruling Request 5

Section 264(f)(1) states that “[n]o deduction shall be allowed for that portion of taxpayer’s interest expense which is allocable to unborrowed policy cash values.”

Section 264(f)(5)(B) states that “[i]n the case of a partnership or S corporation, [section 264(f)] shall be applied at the partnership and corporate levels.”

In connection with Ruling Request 3 we held that under the aggregation rule in section 264(f)(8) Bank A and the Company will be treated as “1 taxpayer,” while Bank B and the Company will not be treated as “1 taxpayer.”

Therefore, deductions for Bank B’s Unrelated Interest Expense will not be disallowed under section 264(f)(1) on account of the Company holding Policies with unborrowed policy cash values.

Ruling Request 6

Section 101(a) provides that “[e]xcept as otherwise provided in . . . [section 101(j)], gross income does not include amounts received . . . under a life insurance contract, if such amounts are paid by reason of the death of the insured.”

Section 101(j)(1) prescribes that “[i]n the case of an employer-owned life insurance contract, the amount excluded from gross income of an applicable policyholder by reason of [section 101(a)] shall not exceed an amount equal to the sum of the premiums and other amounts paid by the policyholder for the contract.” However, section 101(j)(2) lists several exceptions to the rule in section 101(j)(1), as long as the consent requirements in section 101(j)(4) are met.

Section 101(j)(3)(A) defines the term "employer-owned life insurance contract" as:

> a life insurance contract which (i) is owned by a person engaged in a trade or business and under which such person (or a related person described in [section 101(j)(3)(B)(ii)]) is directly or indirectly a beneficiary under the contract, and (ii) covers the life of an insured who is an employee with respect to the trade or business of the applicable policyholder on the date the contract is issued.

The term "applicable policyholder," in turn, is defined by section 101(j)(3)(B)(i) as, "with respect to any employer-owned life insurance contract, the person described in [section 101(j)(A)(i)] which owns the contract." Section 101(j)(3)(B)(ii) expands the definition of “applicable policyholder" by including "related persons," who are defined as "any person which (I) bears a relationship to the person described in [section 101(j)(3)(B)(i)] which is specified in section 267(b) or 707(b)(1), or (II) is engaged in trades or businesses with such person which are under common control (within the meaning of subsection (a) or (b) of section 52).”

Once the Policies are transferred to the Company, and the Company becomes the owner of the Policies, the Company will be the "applicable policyholder" with respect to those Policies and any new Policies the Company may acquire. Thus, given the representation that the Company is engaged in a trade or business and the fact that the Company is the beneficiary under the Policies, a Policy held by the Company that covers an insured who is an "employee" of the Company (as defined in section 101(j)(5)(A)) at the time the Policy is issued will constitute an "employer-owned life insurance policy."

The Company has represented that it satisfies the requirements of section 52 of the Code and section 1.52-1 of the Regulations because Bank A will have a Membership Percentage that exceeds 50 percent. Based on these representations, Bank A and the Company will be aggregated under section 101(j)(3)(B)(ii)(II) and treated as a single "applicable policyholder." This means that any Policy held by the Company that covers an insured who is an "employee" of Bank A (as defined in section 101(j)(5)(A)) at the time the Policy is issued will constitute an “employer-owned life insurance policy."

Conversely, since Bank B will not have a Membership Percentage in excess of 50 percent, Bank B and the Company will not be aggregated under section 101(j)(3)(B)(ii)(II) and treated as a single "applicable policyholder." Therefore, any Policy held by the Company that covers an insured who is an "employee" of Bank B (as defined in section 101(j)(5)(A)) at the time the Policy is issued will not constitute an "employer-owned life insurance policy."

HOLDINGS

1. The transfer of the Policies to the Company will not be treated as a transfer to an investment company (within the meaning of section 351) if the Company were incorporated.

2. A Member's allocable share of Company Unrelated Interest Expense, to the extent allocated to unborrowed cash values of Policies held by the Company, may not be deductible by such Member pursuant to section 264(f)(1).

3. Under section 264(f)(8) Bank A and the Company will be treated as “1 taxpayer,” while Bank B and the Company will not be treated as “1 taxpayer.”

4. Deductions for a portion of Bank A’s Unrelated Interest Expense may be disallowed under section 264(f)(1).

5. Deductions for Bank B’s Unrelated Interest Expense will not be disallowed under section 264(f)(1) on account of the Company holding Policies with unborrowed policy cash values.

6. Any Policy held by the Company of which the Company is the beneficiary will constitute an "employer-owned life insurance contract" if the Policy covers the life of an insured who, on the date the Policy is issued, is (i) an employee of the Company, or (ii) an employee of Bank A, but will not constitute an "employer-owned life insurance contract" if the Policy covers the life of an insured who, on the date the Policy is issued, is an employee of Bank B.

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 the Company 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 representative.

Sincerely,

/S/

SHERYL B. FLUM
Branch Chief, Branch 4
Office of the Associate Chief Counsel
(Financial Institutions & Products)

cc: