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March 07, 2012

LEGEND

X =

Company =

State1 =

Trust =

State2 =

Dear :

This responds to a letter dated September 7, 2011, together with subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting

an entity classification ruling under section 7704 of the Internal Revenue Code.

Facts

The information submitted states that X is a domestic life insurance company. X currently invests through separate accounts ("Separate Accounts"), and subaccounts thereof, individually investing in one or more series (or "Funds") of Company. Company is a State1 corporation organized under the laws of State1. Company is an open-end management investment company, registered under the Investment Company Act of 1940 ("the 1940 Act"). Company issues a separate series of stock representing ownership interest in each of the Funds. Each Fund is treated as a separate corporation for federal income tax purposes by operation of section 851(g), and each Fund has elected to be taxed as a separate regulated investment company within the meaning of section 851(a). The Funds serve as funding vehicles for variable life insurance policies and variable annuity contracts (collectively, "Variable Contracts") issued by X. X is a shareholder of each of the Funds.

Company proposes to reorganize its business operations into Trust, a State2 statutory trust that will be the successor-in-interest to Company and will adopt Company's registration statement as a management investment company under the 1940 Act (the "Reorganization"). Trust will establish several series ("New Funds") pursuant to State2 law, and will issue separate shares of beneficial interest ("Shares") representing ownership interests in each of the New Funds. For each Fund of Company, Trust will create a corresponding New Fund for the purpose of acquiring and carrying on the activities of a corresponding Fund. Trust's declaration of trust provides that Shares in the New Funds may be held only be segregated asset accounts of life insurance companies to support Variable Contracts, or other shareholders permitted under § 1.817-5(f) to have a beneficial interest in a New Fund without causing the loss of "look-through" treatment under that regulation.

Each Fund will undergo the following steps to effectuate the Reorganization. Each Fund will transfer its assets to a New Fund in exchange for Shares in the New Fund and the New Fund's assumption of the Fund's liabilities. The Fund will distribute in complete liquidation the Fund's Shares in the New Fund to its shareholders. X, as a current shareholder of the Funds, will therefore become an owner of Shares in each New Fund corresponding to a Fund.

After the Reorganization, each subaccount of the Separate Accounts will invest solely in one or more New Funds. The holder of a Variable Contract may specify in which subaccounts of the Separate Accounts the premiums are to be invested. The benefits that X pays to the contract holder will reflect in part the investment return associated with, and the market value of, the relevant underlying investment options supporting the Variable Contract (i.e. Shares in the New Funds). However, the benefits under the Variable Contracts can vary significantly from the value of the Shares in the

New Funds, 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 interests in a New Fund will be owned only by X, other life insurance companies, or other permissible owners of Shares specified in § 1.817-5(f) (collectively, "Eligible Shareholders"). 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 New Funds.

X requests a ruling that after the Reorganization each New Fund that is otherwise classified as a partnership for federal tax purposes will not be treated as a publicly traded partnership.

X makes the following representations regarding Company's current business operations and the future business operations of Trust after the Reorganization:

1. Company is registered with the Securities and Exchange Commission under the 1940 Act as an open-end management investment company. Each Fund also operates as a separate open-end management investment company and is taxable as a separate corporation for federal income tax purposes by reason of section 851(g).

2. Each Fund has elected to be treated, and has qualified, as a regulated investment company within the meaning of section 851(a) for each taxable year of its existence and intends to qualify as a regulated investment company for its final short taxable period ending on the date of the Reorganization.

3. Pursuant to the Reorganization, Trust, as successor-in-interest to Company, will adopt the Company's registration statement as an open-end management investment company under the 1940 Act.

4. Each New Fund will be a separate series of Trust created in conformance with State2 law and its declaration of trust. The certificate of trust filed on behalf of Trust includes the notice of limitation of liabilities of series, as provided by State2 law.

5. Neither Trust nor any New Fund has ever held itself out as, or made an election to be classified as, a corporation.

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

7. Each New Fund will have its own investment objectives, policies, and restrictions, which shall be the same as the objectives, policies, and restrictions of the corresponding predecessor Fund.

8. Votes of the owners of Shares of the New Funds may be conducted by each New Fund separately with respect to matters that affect only that particular New Fund, except to the extent the 1940 Act requires all Shares to be voted as a single class of shares.

9. Other than in the case of persons permitted under § 1.817-5(f)(3) to have a beneficial interest in a New Fund, all Shares in each New Fund will be held by subaccounts of separate accounts of one or more life insurance companies. Public access to each New Fund will be available exclusively through the purchase of a life insurance policy or annuity contract that qualifies as a variable contract under section 817(d).

10. Each New Fund will operate as a separate business entity for federal tax purposes and, as a business entity with more than one member, will file its own federal tax return. For federal income tax purposes, all interests in each New Fund will be owned by X, other life insurance companies, and other permissible owners under § 1.817-5(f), and not by the variable contract holder.

11. Following the Reorganization, the Shares of each New Fund will at all times be held by fewer than 100 life insurance companies.

12. The Shares of each New Fund are not, and will not be, traded on an established securities market and, accordingly, no owner of Shares will have the opportunity to engage in transactions involving the Shares on an established securities market.

13. The Shares of each New Fund are not, and will not be, regularly quoted by any person, such as a broker or dealer making a market in the Shares and, accordingly, no owner of Shares will have the opportunity to participate in any market in the Shares.

14. No person regularly makes available, and no person will make available, to the public (including customers or subscribers) bid or offer quotes with respect to the Shares in any New Fund, and no person will stand ready to effect buy or sell transactions at quoted prices for itself or on behalf of others; accordingly, no owner of Shares will have the opportunity to engage in transactions involving Shares based upon bid/offer quotes.

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

16. There is no plan or intention for the redemption of Shares by a New Fund to be combined with the issuance of Shares in the New Fund to a new issuee of Shares.

17. Other than the right of an owner of a Variable Contract to allocate premiums or contract value among one or more subaccounts of Separate Accounts, no owner of a Variable Contract (i) possesses, or will possess, control over the investment options of any subaccount or of any New Fund, (ii) has, or will have, any authority to make investment decisions concerning the assets of any subaccount or of any New Fund, or (iii) is permitted or will be permitted to select or recommend particular investments or investment strategies with respect to any subaccount or any New Fund.

18. Following the Reorganization, Trust may in the future establish and designate one or more additional series. Any such additional Trust series will engage in the same type of investment activities as are engaged in by, and will satisfy the same representations as are made with respect to, the New Funds.

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

Law and Analysis

Section 7704(a) provides that except as provided in section 7704(c), a publicly traded partnership will be treated as a corporation.

Section 7704(b) provides that the term “publicly traded partnership” means any partnership if (1) interests in such partnership are traded on an established securities market and (2) interests in such partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

Section 1.7704-1(a)(2)(i) of the Procedure and Administration Regulations provides that for purposes of section 7704(b) and § 1.7704-1, an interest in a partnership includes (A) any interest in the capital or profits of the partnership (including the right to partnership distributions); and (B) any financial instrument or contract the

value of which is determined in whole or in part by reference to the partnership (including the amount of partnership distributions, the value of partnership assets, or the results of partnership operations).

Section 1.7704-1(a)(3) provides that for purposes of section 7704(b) and § 1.7704-1, a transfer of an interest in a partnership means a transfer in any form, including a redemption by the partnership or the entering into of a financial instrument or contract described in § 1.7704-1(a)(2)(i)(B).

Section 1.7704-1(c)(1) provides that for purposes of section 7704(b) and § 1.7704-1, interests in a partnership that are not traded on an established securities market (within the meaning of section 7704(b) and § 1.7704-1(b)) are readily tradable on a secondary market or the substantial equivalent thereof if, taking into account all of the facts and circumstances, the partners are readily able to buy, sell, or exchange their partnership interests in a manner that is comparable, economically, to trading on an established securities market.

Section 1.7704-1(c)(2) provides that for purposes of § 1.7704-1(c)(1), interests in a partnership are readily tradable on a secondary market or the substantial equivalent thereof if-- (i) Interests in the partnership are regularly quoted by any person, such as a broker or dealer, making a market in the interests; (ii) Any person regularly makes available to the public (including customers or subscribers) bid or offer quotes with respect to interests in the partnership and stands ready to effect buy or sell transactions at the quoted prices for itself or on behalf of others; (iii) The holder of an interest in the partnership has a readily available, regular, and ongoing opportunity to sell or exchange the interest through a public means of obtaining or providing information of offers to buy, sell, or exchange interests in the partnership; or (iv) Prospective buyers and sellers otherwise have the opportunity to buy, sell, or exchange interests in the partnership in a time frame and with the regularity and continuity that is comparable to that described in the other provisions of § 1.7704-1(c)(2).

Section 1.7704-1(d) provides that for purposes of section 7704(b) and § 1.7704-1, interests in a partnership are not traded on an established securities market within the meaning of § 1.7704-1(b)(5) and are not readily tradable on a secondary market or the substantial equivalent thereof within the meaning of § 1.7704-1(c) (even if interests in the partnership are traded or readily tradable in a manner described in § 1.7704-1(b)(5) or (c)) unless-- (1) The partnership participates in the establishment of the market or the inclusion of its interests thereon; or (2) The partnership recognizes any transfers made on the market by-- (i) Redeeming the transferor partner (in the case of a redemption or repurchase by the partnership); or (ii) Admitting the transferee as a 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.

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

Rev. Proc. 2011-3, § 3.01(78), 2011-1 C.B. 111, provides the Service will not issue a ruling on whether interests in a partnership that are not traded on an established securities market (within the meaning of section 7704(b) and § 1.7704-1(b)) are readily tradable on a secondary market or the substantial equivalent thereof under § 1.7704-1(c)(1). Rulings specifically pertaining to New Funds supporting variable contract arrangements of life insurance companies do not fall within the intended scope of the no rule area.

Conclusion

The Shares in each New Fund are interests in the capital or profits of the New Funds. Therefore, if the New Funds are partnerships for federal tax purposes, the Shares would be partnership interests for purposes of section 7704(b). See § 1.7704-1(a)(2)(i)(A). The sale of Shares to other insurance companies or to the separate accounts of other insurance companies does not fall within the definition of trading on an established securities market as defined in section 7704(b)(1) and § 1.7704-1(b). Additionally, Shares may only be sold to the Separate Accounts of X, the separate accounts of other life insurance companies, and other persons specified in § 1.817-5(f)(3), and (i) are not regularly quoted by any person, such as a broker or dealer, making a market in the interests; (ii) no person regularly makes available to the public (including customers or subscribers) bid or offer quotes with respect to the Shares and stands ready to effect buy or sell transactions at the quoted prices for itself or on behalf of others; (iii) the owners of Shares do not have a readily available, regular, and ongoing opportunity to sell or exchange the interests through a public means of obtaining or providing information of offers to buy, sell, or exchange interests in the partnership; and (iv) prospective buyers and sellers do not otherwise have the opportunity to buy, sell, or exchange Shares in a time frame and with the regularity and continuity that is comparable to that described in the other provisions of § 1.7704-1(c)(2).

Based solely on the information submitted and the representations made, we conclude that, following the Reorganization, each New Fund that is classified as a partnership will not be treated as 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. Specifically, no opinion is expressed or implied whether the New

Funds are partnerships for federal tax purposes.

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.

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Joy Spies

Joy Spies
Acting Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
Copy of this letter for § 6110 purposes

cc: