Internal Revenue Service

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Date:
March 01, 2013

Legend

Insurance Fund =

Trust =

State =

Manager =

X =

Dear :

This is in response to your request for a ruling that Insurance Fund's investment in the Central Fund will not cause Contract Holders to be treated as the owners of the shares of the Insurance Fund for federal income tax purposes.

FACTS

Insurance Fund is registered with the Securities and Exchange Commission (SEC) as a series of Trust and its shares are registered with the SEC under the Securities Act of 1933, as amended (the "Securities Act"). Trust is a business trust formed under the laws of State and is registered under the Investment Company Act of 1940, as amended (the "1940 Act"), as an open-end management investment company. Pursuant to § 851(g)(1) of the Internal Revenue Code (the "Code"), Insurance Fund is treated as a separate corporation. Insurance Fund has elected to be treated as a regulated investment company (RIC) under Subchapter M, part 1, of the Code and

intends to qualify for the tax treatment afforded RICs under the Code for each of its taxable years.

Shares of Insurance Fund are offered to insurance company segregated asset accounts (collectively, "Separate Accounts") to serve as investment vehicles for variable life insurance policies and variable annuity contracts purchased by individuals (collectively, "Variable Contracts", and the individuals holding the Variable Contracts, the "Contract Holders"). Except as otherwise permitted by §1.817-5(f)(3) of the Income Tax Regulations, all of the shares of Insurance Fund are held directly or indirectly by one or more Separate Accounts of one or more insurance companies and public access to Insurance Fund is available exclusively through the purchase of a variable contract within the meaning of § 817(d). Currently, the sole owners of the Insurance Fund shares are these Separate Accounts. However, from time to time, shares of Insurance Fund may also be offered to and held by (i) other permitted holders described in §1.817-5(f)(3) or (ii) one or more investment companies registered under the 1940 Act that are "funds of funds," the shares of which except as otherwise permitted by §1.817-5(f)(3), are offered exclusive to Separate Accounts of insurance companies. Each Separate Account that holds or will hold shares of Insurance Fund will be a separate account registered with the SEC as a unit investment trust under the 1940 Act or is exempt from registration under the 1940 Act.

Although the terms of each Variable Contract may differ, the applicable insurance company generally will hold the premiums paid by a Contract Holder, net of any fees or commissions, and any income earned on the net premiums in a Separate Account. A Contract Holder generally is able to allocate amounts held in the Separate Account among several different subaccounts that correspond to the variable investment options under his or her Variable Contract. At least one subaccount will correspond to an investment in Insurance Fund.

Insurance Fund is managed by Manager, a registered investment adviser under the Investment Advisers Act of 1940, as amended. Subject to the supervision of Trust's board of trustees, Manager is responsible for managing Insurance Fund's investments by executing transactions in accordance with Insurance Fund's investment objectives, policies, and restrictions, which are set forth in Insurance Fund's prospectus and statement of additional information, as filed periodically with the SEC, and providing related administrative services and facilities under an investment advisory agreement between Insurance Fund and Manager.

Insurance Fund seeks to achieve its investment objective by investing primarily in various types of debt instruments. In addition, Insurance Fund may invest from time to time in an affiliated market fund for purposes of investing any cash that remains uninvested by Manager on any given day (e.g., due to investor purchases and receipt of interest on portfolio securities) or for temporary defensive purposes in response to adverse market, political, economic, or other conditions.

Manager currently proposes to establish a pooled investment vehicle that would invest in X, a particular segment of the debt markets (the "Central Fund"). Insurance Fund will invest a portion of its assets in the Central Fund, in place of investing such assets directly in X. The Central Fund is organized as a series of a business trust formed under the laws of State, and such trust is registered under the 1940 Act as an open-end management investment company. The shares of the Central Fund will be registered with the SEC under the Securities Act. Pursuant to § 851(g)(1) of the Code, the Central Fund will be treated for federal income tax purposes as a separate corporation. The Central Fund will elect to be treated as a RIC under Subchapter M, part 1, of the Code and intends to qualify for the tax treatment afforded RICs under the Code for each of its taxable years. Manager will act as the investment adviser to the Central Fund. Similar to Insurance Fund, subject to the supervision of the applicable trust's board of trustees, Manager will be responsible for managing the Central Fund's investments by executing transactions in accordance with the Central Fund's investment objectives, policies and restrictions, which are set forth in the Central Fund's prospectus and statements of additional information, as will be filed periodically with the SEC, and providing related administrative services and facilities under an investment advisory agreement between the Central Fund and Manager.

The Central Fund will be established for exclusive use by certain entities and accounts for which Manager acts as investment adviser. Therefore, shares of the Central Fund will be available for purchase only by certain Manager-advised entities and accounts, including, without limitation, Insurance Fund. Some of these entities and accounts that will invest in the Central Fund are directly available to investors other than through the purchase of Variable Contracts, including certain publicly available Manager-advised mutual funds that are treated as RICs Subchapter M, part 1, of the Code for federal income tax purposes. In this respect, public access to the Central Fund is available indirectly to investors other than Contract Holders.

Initially, Insurance Fund expects to set an internal target allocation for its investment in the Central Fund. Any such target allocation will not be set out in Insurance Fund's registration statement or otherwise made available to Insurance Fund shareholders; rather, the registration statement will indicate only that Insurance Fund can achieve exposure to certain debt securities either directly or indirectly through another mutual fund advised by Manager. Accordingly, Insurance Fund would not provide notice to Insurance Fund shareholders of a change in an internal target allocation. Manager, in its capacity as investment adviser to Insurance Fund and subject to the supervision of Trust's board of trustees, may determine to change Insurance Fund's internal target allocation to the Central Fund from time to time in its sole and absolute discretion depending on, among other factors, Insurance Fund's investment strategy, changes in market conditions and Manager Fund's market outlook. As such, the percentage of Insurance Fund's assets invested in Central Fund will not be

fixed in advance of any Contract Holder's investment and could be changed at any time by Manager Fund.

Insurance Fund represents that its investment in the Central Fund will be made in accordance with the investment diversification requirements of § 817(h) of the Code and the Income Tax Regulations thereunder. The Central Fund is not eligible for the look-through treatment provided for certain investment companies, partnerships, and trusts under §1.817-5(f) because not all beneficial interests in the Central Fund will be held by one or more segregated accounts of one or more insurance companies (or other permitted holders under §1.817-f(f)(3)). Thus, for purposes of these requirements, Insurance Fund's investment in the Central Fund will be treated as a single investment. Pursuant to § 817(h) and §1.817-5(b), no more than 55% of the value of Insurance Fund's total assets will be represented by any one investment, no more than 70% of the value of Insurance Fund's total assets will be represented by any two investments, no more than 80% of the value of Insurance Fund's total assets will be represented by any three investments and no more than 90% of the value of Insurance Fund's assets will be represented by any four investments.

Other than a Contract Holder's ability to allocate the Variable Contract premiums and transfer amounts in a Separate Account to and from the insurance company subaccount corresponding to Insurance Fund, all investment decisions concerning Insurance Fund are made by Manager in its sole and absolute discretion, subject to supervision by Trust's board of trustees. The Contract Holders do not have, and will not have, any current knowledge of Insurance Fund's specific assets or Insurance Fund's specific allocation to the Central Fund. Insurance Fund's portfolio holdings, however, are made available on a delayed basis in monthly postings on Manager's website, in quarterly filings with the SEC, and in annual and semi-annual reports to shareholders. The Contract Holders cannot, and will not be able to, direct Insurance Fund's investment in any particular asset or recommend a particular investment or investment strategy, and there is not, and will not be, any agreement or plan between Manager and a Contract Holder regarding a particular investment of Insurance Fund. No Contract Holder can, or will be able to, communicate directly or indirectly with Manager concerning the selection, quality or rate of return on any specific investment or group of investments held by Insurance Fund. The Contract Holders do not have, and will not have, any legal, equitable, direct, or indirect ownership interest in any of Insurance Fund's assets. Rather, the Contract Holders have, and will have, only a contractual claim against the insurance companies offering the Variable Contract to collect from the insurance companies under the terms of their specific Variable Contracts. Insurance Fund represents that the foregoing statements in this paragraph will remain true as it invests in the Central Fund.

Except as otherwise permitted by § 4982(f), all shares of Insurance Fund will be held directly or indirectly by the Separate Accounts of life insurance companies that are held in connection with Variable Contracts, and Insurance Fund therefore will qualify for

the exception from federal excise tax provided by § 4982(f), unless a Contract Holder is treated as a shareholder of Insurance Fund pursuant to the investor control requirements of Rev. Rul. 81-225, 1981-2 C.B. 12, and Rev. Rul. 82-54, 1982-1 C.B. 11.

REQUESTED RULING

Insurance Fund, a RIC that is offered to Separate Accounts and other permitted holders under §1.817-5(f)(3), requests the Service to rule that its investment in the Central Fund, a publicly available RIC, will not cause the Contract Holders to be treated as the owners of the shares of Insurance Fund for federal income tax purposes.

LAW AND ANALYSIS

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(h) and §1.817 set forth diversification requirements for segregated asset accounts on which variable contracts are based. Section 817(h)(4) and §1.817-5(f) provide a look-through rule for determining whether the diversification requirements are met. The look-through rule applies to a regulated investment company, partnership, or trust, but only if (A) all the beneficial interests in the investment company, partnership, or trust are held by one or more segregated asset accounts of one or more insurance companies, and (B) public access to the investment company, partnership or trust is available exclusively through the purchase of a variable contract. Under §1.817-5(f)(3), the following four categories of beneficial interest are ignored for purposes of determining whether these two requirements are satisfied:

(1) Interests held by the general account of a life insurance company or a corporation related to a life insurance company, but only if the return of such interest is computed in the same manner as the return on an interest held by a segregated asset account is computed, there is not intent to sell such interests to the public, and a segregated asset account of such life insurance company also holds or will hold a beneficial interest in the investment company, partnership, or trust;

(2) Interest held by a manager, or a corporation related to the manager, of the investment company, partnership or trust, the return on such interest is computed in the same manner as the return on an interest held by a segregated asset account is computed, and there is not intent to sell such interests to the public;

(3) Interests held by the trustee of a qualified pension or retirement plan; or

(4) Interests held by the public, or treated as owned by the policyholders pursuant to Rev. Rul. 81-225, but only if (A) the investment company, partnership or trust was closed to the public in accordance with Rev. Rul. 82-55, 1982-1 C.B. 12, or (B) all the assets of the segregated asset account are attributable to premium payments made by policyholders before September 26, 1981, to premium payments made in connection with a qualified pension or retirement plan, or to any combination of such premium payments.

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 Co. 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, 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 contract holder 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 contract holder and the issuing insurance company or between the contract holder 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 contract holder'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 contract holder 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 contract holder does not have direct or indirect control over the separate account or any sub-account asset, and therefore the contract holder 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, 2003-2 C.B. 350, 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 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 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 contract are considered the owners of the partnership interest that fund the variable contracts, the contract purchasers must include any interest, dividends, or other income derived from the partnership interest in gross income in the year in which the income is earned.

In Rev. Rul. 2007-7, 2007-1 C.B. 468, which clarified and amplified Rev. Rul. 81-225 and Rev. Rul. 2003-92, the Service held that the holder of a variable contract is not treated as the owner of an interest in a RIC that funds the variable contract solely because interest in the same RIC are also available to investors described in §1.817-5(f)(3).

ANALYSIS

The determination of whether the Contract Holders have sufficient incidents of ownership over Insurance Fund's shares to be deemed the owners of those shares depends on all of the relevant facts and circumstances.

Except as otherwise permitted by §1.817-5(f)(3), shares of Insurance Fund are available exclusively through the purchase of Variable Contracts.

A Contract Holder cannot, and will not be able to, direct Insurance Fund's investment in any particular asset or recommend a particular investment or investment strategy. Other than a Contract Holder's ability to allocate the Variable Contract premiums and transfer amounts in the applicable Separate Account to and from the insurance company subaccount corresponding to Insurance Fund, all investment decisions concerning Insurance Fund are, and will be, made by Manager in its sole and

absolute discretion, subject to supervision by Trust's board of trustees. There is not, and there will not be, any arrangement plan, contract or agreement between Manager and a Contract Holder regarding the availability of Insurance Fund through a subaccount available under the Contract Holder's Variable Contract or the specific assets to be held by Insurance Fund. No Contract Holder can, or will be able to, communicate directly or indirectly with Manager concerning the selection, quality or rate of return on any specific investment or group of investments held by Insurance Fund. A Contract Holder does not have, and will not have, any legal, equitable, direct, or indirect ownership interest in any of the assets of the Insurance Fund, but rather has and will have, only a contractual claim against the life insurance company offering the Variable Contract to receive cash from the insurance company under the terms of his or her Variable Contract.

The investment strategy of Insurance Fund is sufficiently broad to prevent the Contract Holders from making particular investment decisions through investment in Insurance Fund. The percentage of Insurance Fund's assets invested in the Central Fund will not be fixed in advance of any Contract Holder's investment and will be subject to change by Manager at any time. In addition, a Contract Holder does not have, and will not have, any current knowledge of Insurance Fund's specific assets or Insurance Fund's specific allocation to the Central Fund.

RULING

Based on all the facts and circumstances Insurance Fund's investment in the Central Fund will not give rise to an impermissible level of investor control by the Contract Holders of Variable Contracts that are funded by Separate Accounts that invest in Insurance Fund and will not cause the Contract Holders to be treated as owners of the shares of Insurance Fund for federal income tax purposes.

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. 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. 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,

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