Internal Revenue Service

Number: **201417007**
Release Date: 4/25/2014

Index Number: 817.00-00, 61.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:FIP:B04
PLR-137170-13, PLR-137171-13
PLR-137172-13, PLR-137173-13
PLR-137174-13, PLR-137175-13

Date: December 19, 2013

Legend

ADVISER =

IP TRUST =

AA TRUST =

State1 =

State2 =

x# =

y# =

z# =

Dear :

This is in response to an August 21, 2013 letter from your authorized representative requesting a ruling concerning the tax ownership of shares of FUNDs. Your representative submitted additional information on December 10, 2013.

FACTS

ADVISER provides asset management, investment processing, and investment operations solutions for institutional and personal wealth management. It registered with the SEC as an investment advisor under the Investment Advisers Act of 1940, as amended.

ADVISER formed IP TRUST as a State1 business trust. IP TRUST will register as an open-end investment company under the Investment Company Act of 1940 (1940 Act). ADVISER will launch x# FUNDs (separate investment portfolios or series) of IP TRUST. For federal income tax purposes, each FUND will be taxed as a regulated investment company (RIC), taxed under Subchapter M of the Internal Revenue Code (Code). Each FUND will available only to insurance companies with segregated asset accounts to use as investment vehicles for variable life insurance and variable annuity contracts[1] held by "variable contract holders".

The terms of each variable contract will differ. However, in general, insurance companies hold contract holder premiums (net of fees and commissions), and income earned thereon, in segregated asset accounts. The contract holder allocates the amount held in segregated asset accounts among the investment options offered.

Each of the x# IP TRUST FUNDs offers a different investment strategy -- aggressive, growth, balanced, moderate, or conservative – to offer contract holders options based on their investment needs, desired return, and risk tolerance. Under the planned structure, each segregated asset account will have at least one subaccount that corresponds to an investment in each FUND.

Although contract holders may allocate premiums, and transfer amounts in the insurance company segregated asset account to and from the insurance company subaccount corresponding to a FUND, ADVISER will make all investment decisions with respect to a FUND (subject to the supervision by the IP TRUST Board of Trustees).

Pursuant to the terms of the contract, the contract holder will have a right to receive cash from insurance company but will have no legal, equitable, direct, or indirect interest in any of the assets of a FUND.

Contract holders will not be able to direct a FUND's investment in any particular asset or recommend a particular investment or investment strategy. There will be no agreement or plan between ADVISER and any contract holder regarding a particular investment. Contract holders will have no current knowledge of the specific assets held by a FUND.[2]

Based on the investment objective of the FUND, each will invest in approximately y# existing ADVISER-advised open-end mutual FUNDs (RETAIL FUNDs). RETAIL FUNDs are taxed as RICs under Subchapter M of the Code. They are available to investors other than through the purchase of a variable contract.

Each FUND's investment in RETAIL FUNDs will comply with the diversification requirements of § 817(h) of the Code. Accordingly:

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[1] "FUNDS may be available for purchase by "permitted holders". (*See*, Treas. Reg. 1.817-5(f)(3)). Also, although FUNDS are available only to insurance companies, ADVISER contributed a nominal amount of "seed money" to establish them.

[2] The FUNDS specific assets become public knowledge on the FUNDS' websites (only on a delayed basis), from SEC filings, and from semi-annual and annual reports to shareholders.

- No more than 55% of the value of each FUND's total assets will be represented by any one investment;
- No more than 70% of the value of each FUND's total assets will be represented by any two investments;
- No more than 80% of the value of each FUND's total assets will be represented by any there investments; and
- No more that 90% of the value of each FUND's total assets will be represented by any four investments.

ADVISER also advises an existing open-end investment company, AA TRUST. AA TRUST is a State2 business trust registered under the 1940 Act. Each of the z# series of AA TRUST (AA TRUST portfolios) is taxed as RICs under the Code.

Each of the x# FUNDs will have investment objectives and strategies identical to x# of the z# AA TRUST portfolios and therefore will invest in the same RETAIL FUNDs. As ADVISER manages the FUNDs and AA TRUST portfolios, it will adjust their positions in the RETAIL FUNDS. To the extent that a FUND and an AA TRUST portfolio have the same investment objectives, the adjustments for each will be the same. However, because FUNDs' investments in RETAIL FUNDs are subject to the diversification requirements of § 817(h), the assets of a FUND may deviate from the assets of the similar AA TRUST portfolio.

Also, the assets of a FUND may deviate from the assets of the AA TRUST portfolio with the same investment objective due to differences in current or expected cash flows, sizes of the FUNDs and/or other operational of financial circumstances. For example, a FUND may have a smaller asset base than the corresponding AA TRUST portfolio and therefore will not make a particular investment in a RETAIL FUND even if the AA TRUST has.

Currently, IP TRUST offers one class of shares for each FUND. However, ADVISER expects to offer additional classes of shares. Each class may provide for variations in distribution, shareholder and administrative servicing fees, transfer agent fees, certain voting rights and dividends. However, each share of each FUND represents an equal proportionate interest in that FUND with each other share of that FUND.

The fee structure of FUNDs may differ from those of the AA TRUST portfolios. The marketplace will dictate the range of fees that FUNDs and the AA TRUST portfolios charge. Accordingly, for this and other reasons, a FUND may offer a class with the same fee structure, or the same total fee, as the AA TRUST portfolio with the same investment objective.

Just as contract holders will have no current knowledge of the assets held by FUND, they will not be able to predict what assets a FUND holds by looking at publicly

available information with respect to the AA TRUST portfolio with the same investment objective.[3]

REPRESENTATIONS

The following representations are made with respect to FUNDs:

1. Except as otherwise permitted by § 1.817-5(f)(3), all of the beneficial interests in FUNDs are held directly or indirectly by one or more segregated asset accounts of one or more insurance companies and public access to FUNDs is available exclusively through the purchase of a variable contract within the meaning of § 817(d).

2. The life insurance companies whose segregated asset accounts hold or will hold shares of FUNDs are life insurance companies within the meaning of § 816(a).

3. Each segregated asset account that will hold shares of FUNDs will be a separate account registered with the SEC as a unit investment trust under the 1940 Act or will be exempt from registration under the 1940 Act.

4. Each FUND will satisfy the diversification requirements of § 817(h) of the Code and § 1.817-5(b) of the regulations.

5. There is not, and there will not be, any arrangement, plan, contract or agreement between ADVISER and any contract holder regarding the availability of FUND as a subaccount under the variable contract or the specific assets to be held by a FUND or a RETAIL FUND.

6. Other than a variable contract holder's ability to allocate variable contract premiums, and transfer amounts in the insurance company segregated asset account to and from the insurance company subaccount corresponding to a particular FUND, all investment decisions concerning FUND will be, made by ADVISER, subject to supervision by IP TRUST's Board of Trustees. The percentage of a FUND's assets invested in a particular RETAIL FUND will not be fixed in advance of any variable contract holder's investment and will be subject to change by ADVISER at any time.

7. A variable contract holder will not be able to direct a FUND's investment in any particular asset or recommend a particular investment or investment strategy,

[3] The asset holding of FUNDS and the AA TRUST portfolios will be publicly available on ADVISER's website only on a delayed basis (about five days after the end of each month), from periodic filings with the SEC, and from semi-annual and annual reports to shareholders.

and there will not be, any agreement or plan between ADVISER and a variable contract holder regarding a particular investment of any FUND.

8. No variable contract holder will be able to communicate directly or indirectly with ADVISER concerning the selection, quality or rate of return on any specific investment or group of investments held by a FUND.

9. A variable contract holder will not have any current knowledge of a FUND's specific assets. A variable contract holder will not have any legal, equitable, direct or indirect ownership interest in any of the assets of a FUND. A variable contract holder only will have a contractual claim against the insurance company offering the variable contract to receive cash from the insurance company under the terms of his or her variable contract.

10. All shares of each FUND will be held directly or indirectly by segregated assets accounts of life insurance companies that are held in connection with variable contracts, or other permitted holders described in Treas. Reg. § 1.817-5(f)(3) may also invest in the FUNDs as defined in § 817(d), and each FUND therefore intends to qualify for the exception from federal excise tax provided by § *4982(f)*, unless a variable contract holder is treated as a shareholder of the relevant 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.

11. It is currently anticipated that all classes of shares of a FUND will have a different fee arrangement for shareholder services or the distribution of shares (or both) as compared to share classes of the AA TRUST portfolio with the same investment objective as the FUND.

LAW

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

In general, the entity possessing legal title to property is the owner of that property for federal income tax purposes. However, the courts attribute ownership of property for tax purposes the person, other than the holder of legal title, who possesses the "benefits and burdens" or "incidence" of ownership. In *Corliss v. Bowers, 281 U.S. 376, 378, 50 S.Ct. 336, 74 L.Ed. 916 (1930)*, the Supreme Court summarized this principle stating:

> 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.

Therefore, objective economic realities, not legal nicety of title, determine tax ownership. For example, in *Helvering v. Clifford, 309 U.S. 331, 60 S.Ct. 554, 84 L.Ed. 788 (1940)*, the taxpayer could not avoid tax ownership of certain securities he contributed to a trust for his wife's benefit because he declared himself trustee and the trust instrument granted him the "absolute discretion" to reinvest or pay out the income to his wife, as well as the ability to buy, sell, and vote the corpus.

The Service applied these general tax ownership principles in a series of "investor control" rulings.[4] Although the rulings apply only to variable insurance products, they cite and adopt the language of the general tax ownership cases and conclude that contract holders who possess control over the investment of the separate account assets (in addition to the other benefits and burdens of contract ownership) are the owners of separate account assets for federal income tax purposes even if the insurance company retains possession of, and legal title to, those assets.[5] The Service found investor control when (1) the holder exercises sufficient control over the assets to be deemed the owner; or (2) the assets are not available exclusively through the purchase of a life insurance or annuity contract.[6]

In *Christoffersen v. United States, 749 F.2d 513 (8th Cir. 1984),* the U.S. Court of Appeals for the Eighth Circuit addressed the tax ownership issue in the context of a variable annuity contract. The contract permitted the policyholders to allocate premiums among subaccounts of the issuing insurance company's separate account. The premiums allocated to a particular subaccount were invested in a specified mutual fund, the shares of which were also available for purchase (directly or indirectly) by the general public. The court ruled that the contract was not an annuity under § 72. Relying on general tax principles, the court concluded that the taxpayers had "surrendered few of the rights of ownership or control over the assets of the sub-account" and that the "investors" bore the entire investment risk, could withdraw any or all of the investment upon seven days' notice, and might never annuitize the contract. Further, the only difference between this "variable annuity" arrangement and that of a traditional brokerage account was the fact that the investor was limited to withdrawing cash.[7]

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[4] Rev. Rul. 77-85, 1977-1 C.B. 12; Rev. Rul. 80-274, 1980-2 C.B. 27; Rev. Rul. 81-225, 1981-2 C.B. 12; and Rev. Rul. 82-54, 1982-1 C.B. 12. *See also* Rev. Proc. 99-44, 1999-2 C.B. 598.

[5] Rev. Rul. 2003-91, 2003-2 C.B. 347, citing Frank Lyon Co. v. United States, 435 U.S. 561 (1978), Comm'r v. Sunnen, 333 U.S. 591 (1948), Helvering v. Clifford, 309 U.S. 331 (1940), and Christoffersen v. United States, 749 F.2d 513 (8th Cir. 1984) (variable contract under which the policyholder did not possess sufficient control over the separate account assets to be treated as owning them for tax purposes.) Rev. Rul. 2003-92, 2003-2 C.B. 350 (for federal income tax purposes, the contract holder owns the interest in the partnerships held by the sub-accounts when the interests in the partnership are available for purchase by investors other than purchasers of annuity or variable contracts; when interests in the partnerships are available for purchase only by purchasing an annuity, life insurance contact, or other variable contracts from an insurance company, for federal income tax purposes, the insurance company owns the interests in the partnerships held by the sub-accounts) cites the same cases as Rev. Rul. 2003-91.

[6] *See*, *e.g.*, Rev. Rul. 77-85; Rev. Rul. 80-274; Rev. Rul. 81-225; Christoffersen v. United States, *supra*.

[7] Christoffersen at 515.

In 1984, Congress addressed the issues raised by the Service's early “investor control” rulings and *Christoffersen* by enacting section 817(h).[8] Section 817(h) applies to variable contracts and requires that the segregated asset accounts supporting them be “adequately diversified” as defined in Treasury regulations.

With respect to the adequate diversification and investor control, the conference agreement states:

> … [t]he conference agreement allows any diversified fund to be used as the basis of variable contracts so long as all shares of the fund 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. *The fact that a similar fund is available to the public will not cause the segregated asset fund to be treated as being publicly available.* (Emphasis added.)
>
> 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 and investments which are made, in effect, at the direction of the investor.[9]

Although Congress intended to prevent investor control by enacting the diversification requirements, the Service and Treasury Department have indicated that, despite § 817(h) and the related regulations, the investor control the doctrine still applies in appropriate cases.[10],[11] For example, see Rev. Rul. 82-54 and Rev. Rul. 2003-91 for situations in which the variable contract holder does not have sufficient control over segregated account assets to be deemed the owner of the assets.

Section 4982(a) imposes a tax on every regulated investment company for each calendar year equal to 4 percent of the excess (if any) of -- the required distribution for such calendar year, over (2) the distributed amount for such calendar year.

Section 4982(f) provides an exemption from such excise tax as follows:

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[8] *See* Deficit Reduction Act of 1984, Pub. L. No. 98-369 § 211(a)

[9] H.R. REP. NO. 98-861, at 1055 (1984) (Conf. Rep.).

[10] Proposed and temporary regulations addressed the minimum level of diversification required to treat an annuity or life insurance contract as a variable contract within the meaning of § 817(d). The preamble to the temporary regulations explicitly states that they do not address investor control. (The final regulations adopted the text of the temporary regulations with changes unrelated to this issue.) It states:

> 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 § 817(d), relating to the definition of variable contracts.

T.D. 8101, 51 FR 32633 (September 15, 1986).

[11] Rev. Rul. 2003-91; Rev. Rul. 2003-92; Rev. Proc. 99-44, *supra.*

> This section shall not apply to any regulated investment company for any calendar year if at all times during such calendar year each shareholder in such company was either – (1) a trust described in section 401 and exempt from tax under section 501(a), or (2) a segregated assets account of a life insurance company held in connection with variable contracts (as defined in section 817(d)).
>
> For purposes of the preceding sentence, any shares attributable to an investment in the regulated investment company (not exceeding $250,000) made in connection with the organization of such company shall not be taken into account.

ANALYSIS

In its revenue rulings, the Service takes the position that, if the holders of a variable life insurance policy or variable annuity contract possess sufficient incidents of ownership over the assets supporting the policy or contract, they are considered the owners of the underlying assets for federal income tax purposes. Accordingly, they lose the tax benefits of the insurance or annuity contract and are currently taxed on income generated by the separate account assets. Whether the contract holder possesses sufficient incidents of ownership over the assets of the separate account depends on all the relevant facts and circumstances.[12]

In Rev. Rul. 81-225, the Service described five situations in which segregated account assets were invested in mutual funds that were also available to the general public. In four of those situations, the policyholders were considered the owners of the investment securities because they had investment control over the mutual fund shares and possessed sufficient other incidents of ownership to be considered the owners of the shares for federal income tax purposes. The policyholders' position in each situation was substantially identical to what it would have been had the mutual fund shares been purchased directly by the policyholders.

Conversely, in Rev. Rul. 82-54, the segregated account assets underlying a variable contract were invested in shares of any or all of three open-end investment companies ("mutual funds"). Each mutual fund represented a different broad, general investment strategy. Shares of the mutual funds were available only to insurance company segregated asset accounts but the mutual funds held common stocks, bonds and money market instruments, all of which were available for purchase by members of the general public. Nonetheless, because the insurance company served as investment manager for each of the mutual funds and retained the right to substitute the shares of any other mutual fund for the shares initially held, the Service concluded that the insurance company, not the contract holders, owned the shares of the mutual funds.

[12] Rev. Rul. 2003-91, *supra.*

See also, Rev. Rul. 2003-91 where based on all the facts and circumstances, the variable contract holder does not have direct or indirect control over the separate account or and sub-account asset.

Based on the facts presented and representation made in the request for ruling, the variable contract holders will not have any more control over the assets of FUNDs than the contract holders in Rev. Rul. 82-54 or Rev. Rul. 2003-91.

CONCLUSION

Based on the authority cited above and the representations and facts presented by the taxpayer, FUNDS investment in RETAIL FUNDs will not cause the variable contract holders to be treated as the owners of FUNDS shares 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.

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.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. See § 11.04 of Rev. Proc. 2009-1, 2009-1 I.R.B. 1, 48. However, when the criteria in § 11.06 of Rev. Proc. 2009-1, 2009-1 I.R.B. 1, 49, are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

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

Sincerely,

Donald J. Drees
Senior Technician Review, CC:FIP:B04
(Financial Institutions & Products)