**Internal Revenue Service**

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Date:
September 14, 2016

X =

Z =

Adviser =
Fund =
Portfolio =

State A =
State B =
Number f =
Number g =
Number h =
Number i =
Number j =

Dear :

This letter is in response Z's request for a ruling that Z, rather than the variable contract holder, is the owner of Portfolio.

## FACTS

Entities

X is the parent of a consolidated group that includes Z and other subsidiaries. Z is a life insurance company within the meaning of § 816(a) of the Internal Revenue Code.

Fund

Fund is a State A business trust. It is an open-end management investment company registered under the Investment Company Act of 1940 and the Securities Act of 1933, as amended.

Portfolio

Portfolio is a newly formed series of Fund. Portfolio has elected to be classified as a partnership.

Ownership of Portfolio

Shares of Portfolio are offered to certain X group life insurance company segregated asset accounts to serve as an investment vehicle for variable contracts. Shares of Portfolio, except as otherwise permitted by § 1.817-5(f)(3) of the Income Tax Regulations, are held by segregated asset accounts underlying variable contracts of one or more life insurance companies. The variable contracts are "variable contracts" within the meaning of § 817(d) of the Code.

Public access to shares of Portfolio is available exclusively through the purchase of a variable contract, except as otherwise permitted by § 1.817-5(f)(3) of the Income Tax Regulations. Although the terms of each variable contract may vary, the insurance company will generally hold the premiums paid by a variable contract holder, net of any fees or commissions, and any income earned on the net premiums in a segregated asset account. The variable contract holder generally will be able to allocate amounts held in the segregated asset account among several different investment options or subaccounts. At least one subaccount will correspond to an investment in Portfolio.

The life insurance companies whose segregated asset accounts hold shares of Portfolio are life insurance companies within the meaning of § 816(a) of the Code.

Portfolio's Investment Objectives

Under normal circumstances, substantially all of Portfolio's assets will be invested in a variety of eligible third-party mutual funds, other third-party variable insurance investment options, or both (collectively, "Underlying Funds"). The Underlying Funds, will, in turn, invest in U.S. and foreign equity and debt instruments. Under normal market conditions, Portfolio's exposure to the two broad assets classes of debt and equity are expected to be as follows: debt will be Number g to Number h percent; equity will be Number i to Number j percent. The portion of Portfolio's assets allocated to an Underlying Fund will change over time and there can be no expectation that current or past positions in an Underlying Fund will be maintained in the future.

Adviser of Portfolio

Fund has entered into an investment advisory agreement with Adviser. Adviser is a corporation organization under the laws of State A and is an indirectly wholly-owned subsidiary of X. Adviser is a registered investment adviser under the Investment Advisers Act of 1940, as amended. Pursuant to the investment advisory agreement, Adviser is responsible for managing the investment and reinvestment of Portfolio's assets and continuously reviewing, supervising and administering Portfolio's investment programs. Adviser has discretion over the percentage of Portfolio's assets allocated to each Underlying Fund.

The investment advisory agreement between the Fund and Adviser shall continue in effect until terminated; provided however (in accordance with the requirements of Section 15 of the Investment Company Act of 1940), that if the agreement is to continue in effect for a period of more than Number f years from the date of its execution, it may only continue if it is specifically approved at least annually by the board of Fund or by a vote of the outstanding voting securities of Portfolio.

Variable Contract Holders

All investment decisions concerning Fund and Portfolio will be made by Adviser in its sole and absolute discretion. A variable contract holder will only be able to allocate premiums and transfer amounts in the insurance company segregated asset account to and from the insurance company subaccount corresponding to a fund. A variable contract holder will not be able to direct Portfolio's investment in any particular asset or recommend a particular investment or investment strategy, and there will be no agreement or plan between Adviser and a variable contract holder regarding a particular investment. A variable contract holder will have no current knowledge of Portfolio's specific assets. Portfolio's holdings, however, will be available as permitted by the SEC, including in quarterly filings with the SEC, and annual and semi-annual reports to shareholders.

A variable contract holder will have no legal, equitable, direct or indirect interest in any of the assets of Portfolio. Rather, a variable contract holder will have only a contractual claim against the insurance company offering the contract to receive cash from the insurance company pursuant to the terms of the specific variable contract.

Portfolio's Diversification

Portfolio will comply with the diversification requirements of § 817(h) and § 1.817-5(b) of the Income Tax Regulations.

## RULING REQUESTED

For federal income tax purposes, Z, rather that the variable contract holder, is the owner of Portfolio.

## LAW

Investor Control Rules

If the separate account assets underlying the variable contract are considered the assets of the life insurance company that issues the contract and not the property of the contract holder, § 817 governs the tax treatment of the contract. If the separate account assets underlying the contract are considered the assets of the contract holder, the contract holder is taxed on the income derived from the investment assets under § 61.

In general, the holder of legal title is the owner of the property and is taxed on the income derived from the property. However, if a person other than the holder of legal title possesses the "benefits and burdens" of ownership, that person is attributed ownership of property for tax purposes. See, e.g., Frank Lyon Company v. United States, 435 U.S. 561 (1978); Helvering v. Clifford, 309 U.S. 331 (1940). The Supreme Court summarized this principle in Corliss v. Bowers, 381 U.S. 376, 378 (1930), stating 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."

The Service applied these general tax ownership principles in a series of "investor control" rulings. 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, Rev. Rul. 82-54, 1982-1 C.B. 11, Rev. Rul. 2003-91, 2003-2 C.B. 347, and Rev. Rul. 2003-92, 2003-2 C.B. 350. The rulings stand for the proposition that contract holders possessing 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.

In Rev. Rul. 77-85, the Service concluded that if the contract holder of an "investment annuity" contract may select and control the investment assets in the separate account of the life insurance company, then the contract holder is treated as the owner of those assets for federal income tax purposes and is taxed on the income derived from the investment assets. In the ruling, the individual contract holder of a variable annuity contract retained 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 contract holder also was able to exercise an owner's right to vote account securities either through the custodian or individually. The Service found that the contract holder possessed "significant incidents of ownership" over the assets held in the custodial account, and thus, concluded that the policyholder was the owner of those assets for federal income tax purposes.

In Rev. Rul. 80-274, the contract holder transferred existing investments to an insurance company in return for an annuity contract and could withdraw all or a portion of the cash surrender value of the contract at any time prior to the annuity starting date. The Service, applying Rev. Rul. 77-85, concluded that the contract holder's position was substantially identical to what it would have been had the investment been directly maintained or established, and thus, the contract holder was the owner of the investment for federal income tax purposes.

In Rev. Rul. 81-225, the Service described four situations in which the contract holder is considered the owner of mutual fund shares held by insurance companies in connection with annuity contracts and one situation in which the insurance company is the owner of the mutual fund shares for federal income tax purposes. In the four situations in which the contract holder is considered the owner of the mutual fund shares, the shares are available for purchase other than through the purchase of an annuity contract. In those situations, the Service concluded that the contract holder had investment control over the mutual fund shares and that the contract holder's position in each situation was substantially identical to what it would have been had the mutual fund shares been purchased directly by the contract holders. Conversely, in the situation in which the mutual fund shares were only available through the purchase of an annuity contract, the insurance company was the owner for federal income tax purposes.

In Rev. Rul. 82-54, the contract holder of certain annuity contracts could allocate premium payments among three funds and had an unlimited right to change those allocations prior to the maturity date of the annuity contract. Interests in the funds were not available for purchase by the general public, but were instead only available through the purchase of an annuity contract. The Service concluded 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, did not constitute control sufficient to cause the contract holders to be treated as the owners of the mutual fund shares for federal income tax purposes.

In 1984, the Eighth Circuit addressed the tax ownership issue in the context of a variable annuity contract. Christoffersen v. United States, 749 F.2d 513 (8th Cir. 1984). The taxpayers, upon purchasing the contract, could allocate premiums among mutual funds and could change the allocation at any time. The taxpayers bore the full investment risk and could withdraw any or all of the investment upon seven days' notice. In addition, the taxpayer was not required to exercise the annuity feature of the contract. The Eighth Circuit concluded that the taxpayers "surrendered few of the rights of ownership or control over assets of the sub-account." Id. at 515. The court held that, for federal income tax purposes, the taxpayers, not the issuing insurance company, owned the mutual fund shares that funded the variable annuity and, 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, the Service concluded that the variable contract holder did not

have sufficient control over segregated account assets to be deemed the owner of the assets. The variable contract was funded by a separate account that was divided into twelve subaccounts. Each subaccount offered a different investment strategy. Interests in the subaccounts were available solely through the purchase of a variable life or variable annuity contract that qualified as a variable contract under § 817(d). The investment activities of each subaccount were managed by an independent investment adviser. There was no arrangement, plan, contract, or agreement between the contract holder and the issuing insurance company or between the contract holder and the independent investment adviser regarding the availability of a particular subaccount, the investment strategy of any subaccount, or the assets to be held by a particular subaccount. Other than a contract holder's right to allocate premiums and transfer funds among the available subaccounts, all investment decisions concerning the subaccounts were made by the issuing insurance company or the independent investment adviser in their sole and absolute discretion. A contract holder had no legal, equitable, direct, or indirect interest in any of the assets held by a subaccount but had 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 concluded that, based on all the facts and circumstances, the contract holder did not have direct or indirect control over the separate account or any subaccount asset, and therefore the contract holder did 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 were able to allocate their premiums among ten different sub-accounts. Each sub-account invested in a partnership. In the factual scenario in which the partnership interests were available other than through the purchase of a variable annuity or life insurance contract, the Service concluded that the contract holders were the owners of the interests in the partnerships. In contrast, if the partnership interests were only available through the purchase of a variable annuity or life insurance contract, the Service concluded that the insurance company was the owner of the interests in the partnerships.

## ANALYSIS

In the revenue rulings discussed above, the Service took the position that if the holder of a variable life insurance policy or variable annuity contract possesses sufficient incidents of ownership over the assets supporting the policy or contract, the contract holder is viewed for federal income tax purposes as the owner of the underlying assets and, as a result, is currently taxed on any income and gains attributable to the underlying assets. The determination of whether the holder of a variable life insurance policy or variable annuity contract possesses sufficient incidents of ownership over the assets of the separate account underlying the variable life insurance contract or variable annuity contract depends on all the relevant facts and circumstances. See Rev. Rul. 2003-91.

In the present case, the variable contract holders do not have any control over Portfolio's investments, including Portfolio's investments in the Underlying Funds. The investment decisions of Portfolio are made by Adviser in its sole and absolute discretion and are subject to change without notice to or approval by the variable contract holders. The variable contract holders in this case do not have any more control over the assets held under their contract than was the case in Rev. Rul. 82-54 or Rev. Rul. 2003-91. Portfolio is not an indirect means of allowing a variable contract holder to invest in an Underlying Fund.

## CONCLUSION

Based on the representations and facts presented, for federal income tax purposes, Z, rather than the variable contract holder, is the owner of Portfolio and its underlying investment assets.

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 letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings and it is subject to verification on examination.

Sincerely,

Alexis A. MacIvor
Branch Chief, Branch 4
(Financial Institutions & Products)