

## Part I

### Section 817.—Treatment of Variable Contracts

26 CFR 1.817-5: Diversification requirements for variable annuity, endowment, and life insurance contracts

(Also §§ 408(p), 408(q), 408A, 415(m), 457(f).)

Rev. Rul. 2007-58

This revenue ruling supplements Rev. Rul. 94-62, 1994-2 C.B. 164, by listing additional arrangements that each qualify as a “qualified pension or retirement plan” for purposes of § 1.817-5(f)(3)(iii) of the Income Tax Regulations.

#### BACKGROUND

Under section 817(h) of the Internal Revenue Code, a segregated asset account upon which a variable annuity or life insurance contract is based must be adequately diversified in order for the variable contract to be treated as an annuity under § 72 or as a life insurance contract under § 7702. Section 817(h)(4) and § 1.817-5(f) provide that in certain cases diversification may be satisfied under a “look-through” rule. If the look-through rule applies with respect to a beneficial interest in a regulated investment company, for example, the diversification requirements are applied by taking into

account the assets held by the regulated investment company. One of the requirements for applying the look-through rule under § 1.817-5(f)(2)(i) is that all of the beneficial interests in a regulated investment company, partnership or trust be held by one or more insurance companies. For purposes of determining whether this requirement is satisfied, § 1.817-5(f)(3)(iii) provides that beneficial interests held by the trustee of a qualified pension or retirement plan are disregarded.

Rev. Rul. 94-62 provides that, solely for purposes of § 1.817-5(f)(3)(iii), the term "qualified pension or retirement plan" includes the following arrangements:

1. A plan described in § 401(a) that includes a trust exempt from tax under § 501(a);
2. An annuity plan described in § 403(a);
3. An annuity contract described in § 403(b), including a custodial account described in § 403(b)(7);
4. An individual retirement account described in § 408(a);
5. An individual retirement annuity described in § 408(b);
6. A governmental plan within the meaning of § 414(d) or an eligible deferred compensation plan within the meaning of § 457(b);
7. A simplified employee pension of an employer that satisfies the requirements of § 408(k);
8. A plan described in § 501(c)(18);
9. Any other trust, plan, account, contract, or annuity that the Internal Revenue Service has determined in a letter ruling to be within the scope of § 1.817-5(f)(3)(iii).

Whether an arrangement is described in § 1.817-5(f)(3)(iii) is based on the meaning and purpose of §§ 817 and 818. Since the issuance of Rev. Rul. 94-62, the Service has determined that certain additional arrangements may be treated as “qualified pension or retirement plans” for purposes of § 1.817-5(f)(3)(iii).

#### HOLDING

In addition to the nine arrangements identified in Rev. Rul. 94-62 and solely for purposes of § 1.817-5(f)(3)(iii), the term “qualified pension or retirement plan” includes the following five arrangements: a simple retirement account described in § 408(p); a deemed IRA described in § 408(q); a Roth IRA described in § 408A; a § 415(m) plan that is also a “governmental plan” within the meaning of § 414(d); and a § 457(f) plan that has as its sponsor either (i) a charitable organization described in § 818(a)(4), or (ii) a governmental organization described in § 818(a)(4), whose employees are described in § 403(b)(1)(A)(ii). Accordingly, the list of arrangements that are treated as “qualified pension or retirements plans” within the meaning of § 1.817-5(f)(3)(iii) is supplemented to read as follows:

1. A plan described in § 401(a) that includes a trust exempt from tax under § 501(a);
2. An annuity plan described in § 403(a);
3. An annuity contract described in § 403(b), including a custodial account described in § 403(b)(7);
4. An individual retirement account described in § 408(a);
5. An individual retirement annuity described in § 408(b);
6. A governmental plan within the meaning of § 414(d) or an eligible deferred compensation plan within the meaning of § 457(b);

7. A simplified employee pension of an employer that satisfies the requirements of § 408(k);

8. A plan described in § 501(c)(18);

9. A simple retirement account described in § 408(p);

10. A deemed IRA described in § 408(q);

11. A Roth IRA described in § 408A;

12. A § 415(m) plan that is also a “governmental plan” within the meaning of § 414(d);

13. A § 457(f) plan that has as its sponsor either (i) a charitable organization described in § 818(a)(4), or (ii) a governmental organization described in § 818(a)(4), whose employees are described in § 403(b)(1)(A)(ii); and

14. Any other trust, plan, account, contract, or annuity that the Internal Revenue Service has determined in a letter ruling to be within the scope of § 1.817-5(f)(3)(iii).

#### EFFECT ON OTHER REVENUE RULING(S)

Rev. Rul. 94-62 is supplemented.

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Melissa S. Luxner of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue ruling, contact Melissa S. Luxner at (202) 622-3970 (not a toll-free call).