



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

CHIEF COUNSEL

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CC:TEGE:EB:EC: [REDACTED]
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[REDACTED]

Dear [REDACTED]:

This is in response to your letter requesting general information. Specifically, you asked that we confirm that a private letter ruling request for a nonqualified deferred compensation arrangement would not be barred by Revenue Procedure 92-64, 1992-2 C.B. 422, in cases where there was no grantor trust for tax law purposes because the trust agreement provides that the investment of trust assets shall be made by the trustee in accordance with the directions of the plan sponsor. Alternatively, you asked whether the Internal Revenue Service would consider the issuance of a private letter ruling as justified by unusual circumstances. We apologize for the delay in responding.

Rev. Proc. 92-64 contains a model grantor trust which serves as a safe harbor for taxpayers that adopt and maintain grantor trusts in connection with unfunded deferred compensation arrangements. Section 3 of Rev. Proc. 92-64 provides that rulings will not be issued on unfunded deferred compensation arrangements that use a trust other than the model trust, except in rare and unusual circumstances. See also sections 3.01(36) and 4.01(34) of Rev. Proc. 2002-3, 2002-1, I.R.B. 117.

Section 5.01 of Rev. Proc. 92-64 provides that the trustee must be given some investment discretion, such as the authority to invest within broad guidelines established by the parties. Model trust section 5 sets forth alternative investment authority provisions to be used for purposes of coming within the safe harbor. Because it does not conform to the provisions of Rev. Proc. 92-64 and does not present a rare and unusual circumstance, we would be unable to issue a private letter ruling on a nonqualified deferred compensation plan using a trust in which investment authority rests with the plan sponsor rather than the trustee.

Section 7 of Rev. Proc. 92-64 requests comments on the model trust provisions. As was discussed with you by telephone, your inquiry will be treated as a comment that the Service consider modifying the model grantor trust provisions in Rev. Proc. 92-64 to include trusts in which the investment authority rests with the plan sponsor. You have also indicated that you would like to submit additional comments on why the model trust

GENIN-121458-02

provisions regarding investment authority should be modified. We look forward to receiving your comments.

We hope this is responsive to your inquiry. If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

Catherine Livingston Fernandez
Chief, Executive Compensation Branch
Office of the Division Counsel/Associate
Chief Counsel (Tax Exempt and
Government Entities)