

Internal Revenue Service

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Date:
May 29, 2014

Insurance Fund =

Trust =
State =
Date =
Retail Fund =
Adviser =
Subadviser =
Index =

Dear :

This is in response to the letter submitted by your authorized representatives dated March 14, 2014, requesting a ruling concerning the tax ownership of Insurance Fund, a series of Trust, for federal income tax purposes.

FACTS

Trust

Trust is a statutory trust formed under the laws of the State on Date. Trust is registered with the Securities and Exchange Commission (the "SEC") as an open-end investment company under the Investment Company Act of 1940, as amended (the "1940 Act").

Trust currently has nine series. Each of the nine series has a differing investment objective and strategy. Each of the nine series has elected to be taxable as a regulated investment company under Subchapter M of the Internal Revenue Code ("Code") and to be treated as a separate corporation pursuant to section 851(g)(1).

Retail Fund is one of the nine series. Retail Fund is publicly available to investors other than through purchase of a life insurance contract or variable annuity contract within the meaning of section 817(d).

Adviser and Subadvisers of Fund

Adviser is a registered investment adviser under the Investment Advisers Act of 1940, as amended. Advisor has entered into an investment subadvisory agreement with Subadviser to provide investment advisory services to Trust. In its capacity as manager of Insurance Fund, Subadviser, or its affiliate, will contribute seed money to Insurance Fund.

Insurance Fund

Insurance Fund is a new series of Trust that the Subadviser intends to introduce. Insurance Fund will elect to be treated as a regulated investment company under Subchapter M of the Code.

Insurance Fund will be offered exclusively to insurance company segregated asset accounts to serve as an investment vehicle for life insurance contracts or variable annuity contracts within the meaning of section 817(d) (“Variable Contracts”) and possibly to permitted holders as described in Treas. Reg. § 1.817-5(f)(3) (“Permitted Holders”). Each Variable Contract holder will be able to allocate its amounts held in a segregated asset account among the ten series, including Retail Fund and Insurance Fund.

Retail Fund and the Insurance Fund will have identical investment objectives and strategies. Subadviser will make investment decisions at the same time for both Retail Fund and Insurance Fund. Trades in both Retail Fund and Insurance Fund will generally occur simultaneously, subject to the diversification requirements under section 817(h) that apply to Insurance Fund, but not Retail Fund.

The investment returns of Insurance Fund and Retail Fund will potentially deviate. Because Insurance Fund will be a source of investment for variable annuity contracts, which are not eligible for the alternative diversification rules with respect to U.S. Treasury securities under section 817(h)(3), Insurance Fund and Retail Fund may differ in their investment in U.S. Treasury securities. Retail Fund has and will continue to invest in U.S. Treasury securities without regard to these rules. It is anticipated, therefore, that the investment returns of Retail Fund and Insurance Fund will deviate as a result of the fact that Insurance Fund will not be able to invest as significantly in U.S. Treasury securities as Retail Fund and other differences between Retail Fund and Insurance Fund. In addition, there may be differences in current or expected cash flows, sizes of Insurance Fund and Retail Fund, and other operational or financial circumstances that might result in differing portfolios and investment returns.

Retail Fund and Insurance Fund will each offer multiple classes of shares that may differ based on differing levels of distribution and, or, shareholder service fees. The

investment advisory fee will be the same for Retail Fund and Insurance Fund. Under the currently contemplated fee structure, Class I of Retail Fund will have the same expense structure as Class III of Insurance Fund, but the other classes' fee structures will likely differ between Retail Fund and Insurance Fund.

Insurance Fund's Investment Objective

Insurance Fund's investment objective is to provide investment results that, before fees and expenses, correspond generally to the performance of the Index. The Index's objective is to provide consistent long-term, risk adjusted outperformance with the goal of capturing more upside in rising equity markets, and limiting the downside, including up to 100 percent cash allocation during market downturns. Retail Fund has the same investment objectives as Insurance Fund.

Insurance Fund's Diversification

Insurance Fund will comply with the diversification requirements of section 817(h) and Treas. Reg. § 1.817-5(b).

Variable Contract Holders

Other than a Variable Contract holder's ability to allocate premiums and transfer its amounts held in an insurance company's segregated asset account among the account's investment options, all investment decisions concerning Insurance Fund will be made by Subadviser, subject to the approval of the Trust's board of trustees. A Variable Contract holder will not be able to direct Insurance Fund's investments in any particular asset or recommend a particular investment or investment strategy, and there will not be any agreement or plan between the Adviser or the Subadviser and a Variable Contract holder regarding a particular investment. A Variable Contract holder will only have knowledge of Insurance Fund's specific assets on a delayed basis based on information provided on the Subadviser's website (within 60 days after the end of each fiscal quarter) and in periodic filings with the SEC. A Variable Contract holder will have no legal, equitable, direct or indirect interest in any of the assets of Insurance Fund; rather, a Variable Contract holder will have only a contractual claim against the insurance company issuing the respective Variable Contract pursuant to the terms of that Variable Contract.

Representations

In addition to the facts described above, Adviser has also made the following representations:

1. Except as otherwise permitted by Treas. Reg. § 1.817-5(f)(3), all of the beneficial interests in Insurance Fund will be held directly or indirectly by one or more segregated asset accounts of one or more insurance companies and public access to Insurance Fund will be available exclusively through the purchase of a Variable Contract;

2. The life insurance companies whose segregated asset accounts will hold shares of Insurance Fund will be life insurance companies within the meaning of section 816(a);
3. Each segregated asset account that 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 which will be exempt from registration under the 1940 Act;
4. Insurance Fund will satisfy the diversification requirements of section 817(h) and Treas. Reg. § 1.817-5(b);
5. There is not, and there will not be, any arrangement, plan, contract or agreement between the Adviser or Subadviser and any Variable Contract holder regarding the availability of Insurance Fund as a subaccount under the Variable Contract, or the specific assets to be held by Insurance Fund or 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 Insurance Fund, all investment decisions concerning Insurance Fund will be made by the Adviser and Subadviser, subject to supervision by the Trust's board of trustees;
7. A Variable Contract holder will not be able to direct Insurance Fund's investment in any particular asset or recommend a particular investment or investment strategy, and there will not be any agreement or plan between the Adviser or Subadviser and a Variable Contract holder regarding a particular investment of Insurance Fund;
8. No Variable Contract holder will be able to communicate directly or indirectly with the Adviser or Subadviser concerning the selection, quality or rate of return on any specific investment or group of investments held by Insurance Fund;
9. A Variable Contract holder will not have any current knowledge of Insurance Fund's specific assets. A Variable Contract holder will not have any legal, equitable, direct or indirect ownership in any of the assets of Insurance 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 of the shares of Insurance Fund will be held directly or indirectly by segregated asset 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), and therefore qualify for the exception from federal excise tax provided by section 4982(f), unless a Variable Contract holder is

treated as a shareholder of Insurance Fund pursuant to the investor control requirements for purposes of sections 61 and 817 of the Code and Revenue Ruling 81-225, 1981-2 C.B. 12, and Revenue Ruling 82-54, 1982-1 C.B. 11; and

11. It is currently anticipated that certain classes of shares of Insurance Fund will have a different fee arrangement for shareholder services or the distribution of shares (or both) as compared to share classes of Retail Fund, but some classes of Insurance Fund will have the same fee structure as Retail Fund.

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, section 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 section 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 section 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 Revenue Ruling 2003-92, the purchasers of variable annuity and variable life insurance contracts were able to allocate their premiums among ten different subaccounts. 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 instant case, the Variable Contract holders do not have any control over Insurance Fund's investments. The investment decisions of Insurance Fund are made by Insurance Fund's Adviser and Subadviser in their 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. Insurance Fund is not an indirect means of allowing a Variable Contract holder to invest in a publically-available fund.

CONCLUSION

Based on the authority cited herein and the representations and facts presented by Insurance Fund, the formation and operation of Insurance Fund as described herein and its establishment as a separate series within the same Trust as Retail Fund will not cause the Variable Contract holders to be treated as the owners of the shares of Insurance Fund for federal income tax purposes.

Except as expressly provided herein, no opinion is expressed 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 Taxpayer. 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(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

/s/

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

cc: