

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

ID No.

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PLR-115761-23

Date:
January 29, 2024

In Re:

Taxpayer =
Bank or Trustee =
Active Fund =
Passive Fund =
Determination =
Letter =

Dear :

This letter is written in response to your request

that
the IRS rule that the transfer of a group trust retiree benefit plan's interest in one 81-100 group trust to another 81-100 group trust, both of which are participating trusts in Taxpayer, is not an impermissible assignment under Rev. Rul. 2011-1, 2011-2 IRB 251.

FACTS

You have represented the following facts:

Bank sponsors and is the trustee of Taxpayer, which is a collective trust described in Rev. Rul. 81-100, 1981-1 C.B. 326, as modified by subsequent guidance ("81-100 group trust"), that invests in U.S. real estate across many categories. Taxpayer is available for investment only to investors that are certain types of qualified retirement plans and governmental plans, and to other 81-100 group trusts with assets that are exclusively the funds of such qualified retirement plans and governmental plans. Taxpayer is available both for direct investment by eligible plan investors, and as an investment fund available to other 81-100 group trusts under a fund of funds structure

each of which is sponsored by Bank and managed and administered by Bank as trustee.

The Active Fund and the Passive Fund, both of which invest in Taxpayer, are themselves 81-100 group trusts available only to qualified defined contribution retirement plans and governmental plans. The Bank serves as Trustee of both the Active Fund and the Passive Fund as well as of Taxpayer. The Passive Fund uses similar investment strategies, including asset class allocations, to the Active Fund, but with lower-fee underlying index fund investments for the equity asset class. When a redemption request is placed by a retirement plan investor with either the Active Fund or the Passive Fund, that fund will typically then request a redemption from Taxpayer.

Taxpayer's Declaration of Trust provides that a distribution may be paid in cash or in kind (or partly in cash and partly in kind), equal to the value of the investor's participation on the date as of which such withdrawal is effective. Taxpayer's Declaration of Trust also provides that none of the assets of Taxpayer, nor any participation or any interest in Taxpayer, shall be subject to assignment by or with respect to any participating trust, plan, plan participant or beneficiary. Taxpayer has received a Determination Letter from IRS finding that the terms of the Declaration of Trust comply with the requirements of Rev. Rul. 81-100.

An unaffiliated U.S. qualified retirement plan under section 401(a) that is funded by a trust exempt under section 501(a) (the "Plan") has requested to reallocate from its investment in the Active Fund into the Passive Fund. To comply with the Plan's request to move from the Active Fund to the Passive Fund, the Active Fund will place a redemption request for the Plan's position in Taxpayer in the form of units of Taxpayer representing the Plan's proportionate interest in Taxpayer, and the proceeds will be immediately recontributed to the Passive Fund ("Transfer").

RULING REQUESTED

You have requested a ruling from the IRS that the Transfer is not an "assignment" within the meaning of Requirement (7) of Rev. Rul. 2011-1, such that it will not cause Taxpayer to fail to qualify as an 81-100 group trust within the meaning of Rev. Rul. 2011-1.

LAW AND ANALYSIS

Rev. Rul. 81-100, as modified,¹ provides that certain retiree benefit plans and other arrangements are permitted to pool their assets for investment purposes in an "81-100 group trust" if certain specified requirements are satisfied. These retiree benefit plans and arrangements, known as "group trust retiree benefit plans," are qualified retirement plans under § 401(a) of the Internal Revenue Code (Code); governmental retiree benefit plans under § 401(a)(24); certain custodial accounts under § 403(b)(7); retirement

¹ Rev. Rul. 81-100 has been clarified and modified by Rev. Rul. 2004-67, 2004-2 CB 28; Rev. Rul. 2011-1; Notice 2012-6, 2012-3 IRB 293; and Rev. Rul. 2014-24, 2014-37 IRB 529. Rev. Rul. 81-100 is itself a restatement of the rules governing group trusts under Rev. Rul. 75-530, 1975-2 CB 146, and Rev. Rul.

56-267, 1956-1 CB 206.

income accounts under § 403(b)(9); IRAs that are exempt under § 408(e); eligible governmental plan trusts or custodial accounts under § 457(b); and plans described in section 1022(i)(1) of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, 88 Stat. 829, as amended.

Rev. Rul. 2011-1, as modified, requires in relevant part that a group trust instrument “expressly [prohibit] an assignment by an adopting group trust retiree benefit plan of any part of its equity or interest in the group trust (“Requirement 7”).”² The Declaration of Trust prohibits the transfer or assignment of assets or an interest in Taxpayer by or with respect to any participating trust. Taxpayer has received the Determination Letter from IRS finding that the terms of the Declaration of Trust comply with the requirements of Rev. Rul. 81-100, including the anti-assignment rule.

Rev. Rul. 2011-1, as modified, also requires in relevant part that “the group trust [be] itself adopted as a part of each adopting group trust retiree benefit plan (“Requirement 1”).” You have represented that the Plan is a participating plan in the Active Fund, which is an 81-100 group trust. As such, the Plan must, under Requirement (1) of Rev. Rul. 2011-1, adopt and incorporate by reference the terms of the Active Fund. In turn, the Active Fund is a participating trust in Taxpayer and, as such, must adopt and incorporate by reference the terms of the Declaration of Trust. The Passive Fund, which is also a participating trust in Taxpayer, is similarly required to adopt and incorporate by reference the terms of the Declaration of Trust.

The Plan invests in Taxpayer, albeit indirectly, through the Active Fund. Following the Transfer, the Plan’s investment in Taxpayer would continue indirectly through the Passive Fund, which is also an 81-100 group trust and is subject to the same restrictions on assignment as the Active Fund. Thus, the Plan’s interest in Taxpayer would remain an asset of the Plan following the Transfer. Accordingly, the Transfer is not an impermissible assignment by the Plan of its interest in Taxpayer within the meaning of Requirement (7) of Rev. Rul. 2011-1.

HOLDING

The Transfer is not an impermissible assignment within the meaning of Requirement (7) of Rev. Rul. 2011-1 and, as such, Taxpayer does not fail to qualify as an 81-100 group trust within the meaning of Rev. Rul. 2011-1 with respect to Requirement (7) merely on account of the Transfer.

² The anti-assignment rule of Requirement (7) of the revenue ruling is distinct from the anti-assignment and anti-alienation rule of section 401(a)(13). Requirement (7) is a modified restatement of the anti-assignment rule under Requirement (4) of Rev. Rul. 81-100 (“[t]he group trust instrument prohibits assignment by a participating individual retirement account or employer’s trust of any part of its equity or interest in the group trust”), which in turn is a modified restatement of that requirement under Rev. Rul. 56-267 (“[t]he group trust instrument prohibits assignment by a participating trust of any part of its equity or interest in the group trust...”).

The ruling contained in this letter is based upon information and representations submitted by Taxpayer's authorized representatives and accompanied by a penalties of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2023-1, 2023-1 I.R.B. 1, § 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2023-1, § 11.05.

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 requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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

Sincerely,

Diane S. Bloom

Senior Advisor, Qualified Plans Branch 1
Office of the Associate Chief Counsel
(Employee Benefits, Exempt Organizations,
and Employment Taxes)

Cc: