INTERNAL REVENUE SERVICE

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Legend

Company =
Company A =

Company B =
Company C =

State B =
State C =
State F =

X =

Z Portfolios =

b =
c =
d =
e =

This refers to the letter dated October 24, 2000, which requests certain rulings regarding a regulated investment company ("RIC") that is eligible for "look-through" treatment under section 817(h)(4) of the Internal Revenue Code and section 1.817- 5(f) of the Income Tax Regulations in which shares of the RIC are acquired by a trustee of a pension or deferred compensation plan under the provisions of section 451(a), 415(m), and/or 457(f). In a subsequent letter dated February 9, 2001, Company has withdrawn the portion of the request with respect to section 451(a) and has modified its request regarding sections 415(m) and 457(f).
In the additional submission of February 9, 2001, Company has requested that the trustees of certain section 415(m) and section 457(f) plans qualify as a trustees of a qualified pension or retirement plan under section 1.817-5(f)(3)(iii) of the regulations.

Facts:

Company is a stock life insurance company, taxable under Part I of Subchapter L of the Code, that was originally organized under the laws of State B as Company A. Its name was changed to Company B in b and later to Company C. The current name was adopted in c. In d, Company redomesticated and is now organized under State C.

As part of its regular business activities, Company issues variable annuity contracts (Contracts) and variable life insurance policies and allocates the assets under the Contracts to Company separate accounts (Separate Accounts). Some of the Contracts are commonly referred to as "non-qualified" contracts that are purchased with "after-tax" money, while others are "pension plan contracts" within the meaning of section 818(a).

Company is the sponsor of X. X is a State F corporation organized on e, and registered with the SEC as an open-end management investment company under the 1940 Act. Each Portfolio of X is a separate "series" that is also registered under the 1940 Act and shares of each Portfolio are registered under the Securities Act of 1933. Each Portfolio is treated as a separate corporation pursuant to section 851(g).

X currently offers 36 investment Portfolios. Of this total, 35 have fundamental investment policies that require the Portfolios to manage their investment assets so that the Separate Accounts will always be adequately diversified within the meaning of section 817(h) and section 1.817-5(b). In order to comply with the requirements of section 1.817-5(f)(2)(i) for "look-through" treatment, shares of the 817(h) Portfolios are currently issued only to four categories of owners: (i) to Company's general accounts; (ii) to Company's separate accounts as a funding vehicle under variable contracts within the meaning of section 817(d) and (e); (iii) to certain qualified pension and retirement plans as defined in Rev. Rul. 94-62; and (iv) Z Portfolios.

The plans that are the subject of this request are ones that are designed so that the participant will qualify for income tax deferral with respect to compensation deferred under the plan and interest or other earnings credited on such deferred compensation. These plans include plans that are described in both section 414(d) and 415(m); both section 414(d) and 457(f); both section 457(f) and 818(a)(4) involving a charitable organization sponsor; both section 457(f) and 818(a)(4) involving an educational governmental sponsor.

Section 414(d) defines the term governmental plan as a plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the arrangements listed in sections 414(a)-(c).

Section 415(m) provides generally that in determining whether a governmental plan (as defined in section 414(d)) meets the requirements of section 415, benefits provided under a qualified governmental excess benefit arrangement shall not be taken into account. Income accruing to a governmental plan (or to a trust that is maintained solely for the purpose of

providing benefits under a qualified governmental excess benefit arrangement) in respect of a qualified governmental excess benefit arrangement shall constitute income derived from the exercise of an essential governmental function upon which such governmental plan (or trust) shall be exempt from tax under section 115.

Section 415(m)(3) provides that the term "qualified governmental excess benefit arrangement" means a portion of a governmental plan if: (i) that portion is maintained solely for the purpose of providing to participants in the plan that part of the participant's annual benefit otherwise payable under the terms of the plan that exceeds the limitations on benefits imposed by this section, (ii) no election is provided at any time to the participant (directly or indirectly) to defer compensation under that portion of the plan, and (iii) that the benefits described in subparagraph (A) are not paid from a trust forming part of such governmental plan unless such trust is maintained solely for the purpose of providing such benefits.

Section 415(m)(2) provides that both the taxable year or years for which amounts in respect of a qualified governmental excess benefit arrangement are includible in gross income by a participant, and the treatment of such amounts when so includible by the participant, shall be determined as if such qualified governmental excess benefit arrangement were treated as a plan for the deferral of compensation which is maintained by a corporation that is not exempt from income tax and which does not meet the requirements for qualification under section 401.

Section 457(b) defines an eligible deferred compensation plan. Section 457(f) plans are plans that do not meet all the requirements of section 457(b). Section 457(f) provides generally that if a deferred compensation plan of an eligible employer providing for a deferral of compensation is not an eligible deferred compensation plan, then: (i) the compensation shall be included in the gross income of the participant of beneficiary for the first taxable year in which there is no substantial risk of forfeiture of the rights to such compensation; and (ii) the tax treatment of any amount made available under the plan to a participant or beneficiary shall be determined under section 72 (relating to annuities, etc).

Company represents that there are four distinct categories of section 457(f) plan sponsors:

1) 501(c)(3) organizations, such as a private school or hospital,

2) governmental educational organizations, such as a public school district,

3) other governmental organizations, such as a state hospital or city fire department, and

4) other (non-charitable) exempt organizations, such as a union.

Under section 817(h), a segregated asset account upon which a variable annuity or life insurance contract (other than a pension plan contract) is based must be adequately diversified in accordance with the regulations prescribed by the Secretary in order for the variable contract to be treated as an annuity under section 72 or a life insurance contract under section 7702.

Section 818(a)(1)-(6) defines the term "pension plan" contract for purposes of sections 801-817. Section 818(a)(4) provides that a pension plan contract includes any contract purchased to provide retirement annuities for its employees by an organization described in section 501(c)(3) which was exempt from tax under section 501(a) (or was an organization exempt from tax under section 101(6) of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws), or purchased to provide retirement annuities for employees described in section 403(b)(1)(A)(ii) by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing.

Section 817(h)(4) and section 1.817-5(f) of the regulations provide that in certain cases diversification may be satisfied under a "look-through" rule. Under section 817(h)(4), if all of the interests of a regulated investment company or trust are held by (a) one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts, or (b) fund managers (or affiliated companies) in connection with the creation or management of the regulated investment company or trust, the diversification requirements will be applied by taking into account the assets of such regulated investment company or trust. In effect, compliance with the diversification requirements is determined by taking into account the underlying investment of the regulated investment company or trust in which the segregated asset account invests rather than treating the beneficial interest in such regulated investment company or trust as a single investment of a segregated asset account. See section 1.817-5(f)(1).

Section 1.817-5(f)(2)(i) provides, in relevant part, that the "look-through" rule shall apply to a regulated investment company, partnership or trust only if (a) all of the beneficial interests in the investment company (except as otherwise provided by section 1.817-5(f)(3)) are held by one or more segregated asset accounts of one or more insurance companies, and (b) public access to this investment company is available exclusively (except as otherwise permitted under section 1.817-5(f)(3)) through the purchase of a variable contract.

Section 1.817-5(e) states that a "segregated asset account" consists of all assets the investment return and market value of each of which must be allocated in an identical manner to any variable contract invested in any such assets.

Company represents that each Separate Account sub-account is a segregated asset account within the meaning of section 817 and the regulations thereunder.

Section 1.817-5(f)(3)(iii) provides that the satisfaction of the two ownership conditions set forth in section 1.817-5(f)(2)(i) will not be prevented if beneficial interests in a regulated investment company, partnership or trust are held by, a trustee of a qualified pension or retirement plan.

Rev. Rul. 94-62, 1994-2 C.B. 164 provides a list of various arrangements that will be treated as a "qualified pension or retirement plan" for purposes of section 1.817-5(f)(3)(iii). Specifically, for purposes of section 1.817-5(f)((3)(iii), the term "qualified pension plan"

includes the following two arrangements (of 9 arrangements): (6) a governmental plan within the meaning of section 414(d) or an eligible deferred compensation plan within the meaning of in section 457(b) and (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 section 1.817-5(f)(3)(iii).

Holding:

Accordingly, based solely on the information and representations made in connection with Company's ruling request, we conclude the following:

1. That the trustee of any section 415(m) plan that is also a "governmental plan" within the meaning of section 414(d) will be considered a trustee of a qualified pension or retirement plan within holding (6) of Rev. Rul. 94-62 and section 1.817-5(f)(3)(iii);

2. That the trustee of any section 457(f) plan that is also a "governmental plan" within the meaning of section 414(d) will be considered a trustee of a qualified pension or retirement plan within holding 6 of Rev. Rul. 94-62 and section 1.817-5(f)(3)(iii); and

3. That the trustee of any plan that is described in section 457(f) and which has as its sponsor either (i) a charitable organization described in section 818(a)(4) or (ii) a governmental organization described in section 818(a)(4), whose employees are described in section 403(b)(1)(A)(ii), will be considered a trustee of a qualified pension or retirement plan within holding 9 of Rev. Rul. 94-62 and section 1.817-5(f)(3)(iii).

Except as specifically set forth above, no opinion is expressed as to the tax treatment of the plans under the provisions of any other section of the Code or regulations.

No opinion is expressed whether any plan qualifies as a governmental plan within the meaning of section 414(d).

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

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to Company's authorized representative.

Sincerely yours,
Acting Associate Chief Counsel
(Financial Institutions & Products)
By: Donald J. Drees, Jr.
Senior Technician Reviewer,
Branch 4