

Via Electronic Mail

April 11, 2011

Robert M. Walsh
Employee Plans, Tax Exempt and Government Entities Division
U.S. Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20044

Dear Mr. Walsh:

The American Bankers Association¹ appreciates this opportunity to comment on Revenue Ruling 2011-1 (Revenue Ruling), which, among other things, modifies the rules for group trusts described in Revenue Ruling 81-100. The Revenue Ruling also provides model language that group trusts may use to comply with new provisions, and modifies transition relief for certain Puerto Rican employee benefit plans investing in group trusts. Group trusts are tax-exempt pooled investment vehicles comprising qualified retirement plans, governmental plans, and other eligible investors.

Many of our member institutions maintain bank collective investment funds, which typically satisfy the requirements for a group trust, to invest the assets of qualified employee benefit plans and governmental plans, as well as provide trustee services to other types of group trusts. In light of the significant effect of the Revenue Ruling on this line of business for our bank members, we urge the Internal Revenue Service (Service) to clarify the scope of the new requirements so as to avoid upsetting reasonable, efficient, and established practices.

Separate Account Requirement

In addition to providing some welcome changes for group trust sponsors, the Revenue Ruling adds several new requirements for group trusts and those plans or accounts that are invested in group trusts. In particular, Item 6 of the Revenue Ruling requires that a group trust instrument expressly provide for:

separate accounts (and appropriate records) to be maintained to reflect the interest which each adopting group trust retiree benefit plan has in the group trust, including separate accounting for contributions to the group trust from the adopting plan, disbursements made from the adopting plan's account in the group trust, and investment experience of the group trust allocable to that account.²

¹ The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its 2 million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities. Learn more at www.aba.com.

² Rev. Rul. 2011-1, page 11.

This new requirement was seemingly introduced to prohibit “a transaction or accounting method which has the effect of directly or indirectly transferring value from the account of one adopting plan”³ to another.

Group trusts maintained by a bank already address this potential concern through the use of “unitized accounting,” in which participants’ interests are represented by Units, the non-transferable and proportionate, undivided interest in the group trust. These Units share on a pro-rata basis the income, profits, losses, and expenses of the group trust and determine the value of a participant’s interest for purposes of purchases and redemptions. This widely-used method of accounting prevents the direct or indirect transferring of value from one participant to another.

Unfortunately, Item 6 of the Revenue Ruling has caused some confusion about whether a group trust would fulfill the “separate accounts” requirement if it uses unitized accounting and furthermore whether there is intent to introduce a new or additional recordkeeping requirement. Any such new or additional accounting or recordkeeping requirement would be disruptive and cause uncertainty for sponsors and participants in group trusts. Such a result would not be warranted without having demonstrated that the current method that some group trusts employ is deficient. We, therefore, strongly urge the Service to confirm that unitized accounting would satisfy the “separate accounts” requirement.

Annuity Contracts and Other Tax-Favored Accounts

In the Request for Comments section, the Revenue Ruling poses the question of whether annuity contracts and other tax-favored accounts held by plans described in Sections 401(a) or 403(b), such as pooled separate accounts supporting annuity contracts, should be permitted to invest in group trusts. This request for comment has led to confusion over what were considered to be established practices. There is precedent that the Service has acknowledged the validity of annuity contracts investing in group trusts through the issuance of determination letters. In addition, the Securities and Exchange Commission has allowed separate accounts to invest in bank-maintained group trusts that are exempt from registration under Section 3(c)(11) of the Investment Company Act. Therefore, ABA believes that no further guidance is needed except for a confirmation from the Service that annuity contracts and other tax-favored accounts may invest in group trusts.

Governmental Plans

The Revenue Ruling contains two new requirements that affect governmental retiree benefit plans which are invested in group trusts. The first requires that all plans, including governmental plans, adopt the group trust as part of the plan itself. This requirement has always applied to qualified plans under Internal Revenue Code Section 401. However, governmental plans, which are permitted to invest in group trusts under Section 401(a)(24), have no such adoption requirement written into the statute. This new requirement could be problematic for certain governmental plans that use a state statute for its governing document. Under the second new rule, the plan’s governing document must require that the plan is for the “exclusive benefit” of the plan participants and their beneficiaries. Again, if a governmental plan is governed under a state statute it may be difficult to amend the state law within the period allowed under the

³ Id.

Revenue Ruling. ABA, therefore, requests that the Service clarify that governmental plans satisfy this requirement if subject to a statutory exclusive benefit requirement, even if the plan does not have a governing document, as such, or any such document does not include the “exclusive benefit” requirement imposed by the applicable law or regulation.

Puerto Rican Plans

ABA and our member institutions appreciate the Service’s extension of time to transfer Puerto Rican plan assets from a qualified plan to a Section 1022(i)(1) plan. The Service indicates that more guidance is forthcoming on whether Section 1022(i)(1) plans may be invested in an 81-100 group trust as a general matter. ABA strongly urges the Service promptly to issue guidance that clearly supports the ability of Section 1022(i)(1) plans continuing to invest in group trusts in which they already may be invested, as well as to make new investments in group trusts in which they had not been invested as of January 10, 2011. There is a strong historical and legal basis for allowing these plans in group trusts – indeed the Service has concluded that these plans can invest in group trusts⁴ – and we cannot see any reason for disrupting these investments.

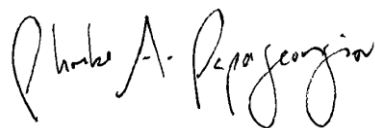
Model Amendments to Group Trust Documents

The Revenue Ruling’s two model amendments for the governing documents of group trusts are only available for group trusts that had received a determination letter prior to January 10, 2011. However, there are a number of group trusts that have been awaiting determination letters, including some that have been waiting for more than a year. In addition, we understand that certain banks may not have requested determination letters for certain group trusts, a fact that has no effect on the qualified status of the group trust. ABA requests that the Service address how the referenced group trusts can comply with the new requirements for changes to the governing document.

Conclusion

Thank you for this opportunity to comment on the Revenue Ruling. ABA urges the Service to clarify the scope of certain of the new requirements as we have recommended and to provide more flexibility with respect to Puerto Rican plans. If you have any questions about this letter or wish to discuss bank sponsored group trusts, please do not hesitate to contact the undersigned at phoebep@aba.com or (202) 663-5053.

Sincerely,



Phoebe A. Papageorgiou
Senior Counsel

⁴ Private Letter Ruling 200336034.