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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEC 19 2002

UICs: 402.00-00
402.03-00

T:EP:RA:T3

LEGEND:

Company L:

Company M:

Company N:

Company O:

Company P:

Domestic Plan:

State A:

State B:

City C:

Date 1:

Date 2:

Ladies and Gentlemen:

This is in response to the , 2002, request for a letter ruling submitted on your behalf by your authorized representative, as supplemented by correspondence dated , 2002, and , 2002, in which you request rulings with regard to certain tax consequences of a merger of the Domestic Plan into a Puerto Rican Plan and associated Trust to be established by a subsidiary of the entity that sponsors the Domestic Plan. The following facts and representations support your ruling request.

Company M is a State A corporation which maintains its principal office in State B. Company M was spun-off from Company L on Date 1, 2001.

Company M has established and currently maintains Domestic Plan which includes a qualified cash or deferred arrangement described in § 401(k) of the Internal Revenue Code and in § 1165(e) of the Puerto Rican Internal Revenue Code. Domestic Plan currently only covers employees of Company M and its subsidiaries who are employed in Puerto Rico. The sole company affiliated with Company M that currently employs individuals in Puerto Rico is Company N, a wholly owned subsidiary of Company O which is a wholly owned subsidiary of Company M.

Domestic Plan maintains its related trust in Puerto Rico. The trustee of Domestic Plan's trust is Company P which maintains its primary office in City C, Puerto Rico.

Domestic Plan received a favorable determination letter from the Internal Revenue Service on Date 2, 2002. As part of its determination letter application filed with respect to Domestic Plan, Company M made the irrevocable election described in § 1022(i)(2) of Title I of the Employee Retirement Income Security Act of 1974, as amended, (ERISA) and § 1.401(a)-50 of the Income Tax Regulations. Thus, Domestic Plan is considered a Code § 401(a) plan and its related trust is considered to be a trust described in Code § 401(a).

Company M intends to establish a Puerto Rican Plan and related Trust (the PR Plan) and merge its Domestic Plan and related trust, in its entirety, into the PR Plan. Company N will sponsor the PR Plan. The PR Plan will be a profit-sharing plan that contains a cash or deferred arrangement within the meaning of § 1165(e) of the Puerto Rican Internal Revenue Code. The PR Plan is intended to be qualified within the meaning of § 1165(a) of the Puerto Rican Internal Revenue Code. The PR Plan will not be qualified within the meaning of Code § 401(a). The trust that forms part of the PR Plan will be a trust created and established in accordance with Puerto Rican law. Company N does not intend to make the irrevocable election described in § 1022(i)(2) of Title I of ERISA with respect to the PR Plan. A portion of Domestic Plan's assets are invested in a common fund that is invested in Company M stock, and shares in this common fund will be transferred to the PR Plan's trust.

Your authorized representative has asserted on your behalf that the PR Plan will satisfy the requirements of ERISA § 1022(i)(1) and § 1.501(a)-1(e) of the regulations. As a result, the PR Plan's related trust will be exempt from tax under Code § 501(a). Your authorized representative has also asserted that the PR Plan/related trust will cover only residents of Puerto Rico.

It is represented that at no time will the transferred account balances of the Puerto Rican participants be "made available" to them or be within their control except upon distributable events specified in the terms of the PR Plan. It is also represented that the

proposed merger of Domestic Plan and its related trust with and into the PR Plan and its related trust will satisfy the applicable requirements of Code § 414(l).

Based on the above facts and representations, you, through your authorized representative, request the following letter rulings:

1. The merger of Domestic Plan and its related trust into the PR Plan and its related trust will not result in the recognition of income pursuant to § 402(a) of the Code by participants in Domestic Plan whose account balances are "merged" into the PR Plan and its related trust; and

2. The merger of Domestic Plan and its related trust into the PR Plan and its related trust will not result in the recognition of income pursuant to § 402(b) of the Code by participants in Domestic Plan whose account balances are "merged" into the PR Plan and its related trust.

With respect to your ruling requests, Code § 501(a) provides, in relevant part, that an organization described in Code § 401(a) shall be exempt from taxation.

Code § 401(a) provides, in relevant part, that a trust created or organized in the United States and forming part of a profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust. A plan associated with a trust that meets this requirement as well as other provisions of Code § 401(a) and related Code sections is a qualified plan. A nonqualified plan is any plan that is not described in Code § 401(a).

Section 1022(i)(1) of ERISA provides, in relevant part, that for purposes of Code § 501(a), any trust of a profit-sharing plan all the participants of which are residents of Puerto Rico shall be treated as an organization described in § 401(a) if the trust is part of a profit-sharing plan and is exempt from taxation under the laws of Puerto Rico. For this purpose, Puerto Rican residents include bona fide residents of Puerto Rico, and persons who perform labor or services primarily within Puerto Rico regardless of residence for other purposes.

Section 1.501(a)-1(e) of the Income Tax Regulations provides, in pertinent part, that the effect of § 1022(i)(1) of ERISA is to exempt such trusts from U.S. income tax on their U.S. investments, even though they are not U.S. based trusts nor otherwise part of a plan qualified under Code § 401(a). These plans are not subject to Title II of ERISA.

Section 1022(i)(2) of ERISA provides that an employer may elect to treat a trust described in § 1022(i) as a U.S. based trust. As noted above, Company N, which will sponsor the PR Plan, will not make said election.

Code § 402(a) provides, in relevant part, that any amount actually distributed to any distributee by a qualified trust shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under § 72.

Code § 402(b)(1) provides, in relevant part, that contributions to an employees' trust made by an employer during a taxable year of the employer which ends with or within a taxable year of the trust for which the trust is not exempt shall be included in the gross income of the employee in accordance with § 83.

Revenue Ruling 67-213, 1967-2 C.B. 149, holds that where the interests of participants are transferred from a trust forming part of one qualified plan to a trust forming part of another qualified plan, no amounts will be considered distributed or made available to the participants by reason of their transfer.

Under Code § 402(a), a participant's interest in a trust forming part of a qualified plan is includible in income in the taxable year in which it is distributed from the trust. Thus, generally, transfer of amounts held in a trust of a plan qualified within the meaning of Code § 401(a) to a trust of a plan not qualified will give rise to a taxable distribution.

However, under Rev. Rul. 67-213, a transfer of the participant's interest from one qualified trust to a trust forming part of another qualified plan would not be a distribution of that interest. A similar conclusion would be reached if one qualified plan is merged into another such plan.

In this case, the substance of the proposed transaction is that a Code § 401(a) qualified plan and related trust (Domestic Plan) will be merged into a nonqualified plan the trust of which is deemed qualified pursuant to § 1022(i)(1) of ERISA for purposes of exemption under Code § 501(a) (the PR Plan). Thus, the issue raised in this case is whether a result similar to that reached under Rev. Rul. 67-213 would be reached if the transferee plan is not a Code § 401(a) qualified plan even though its trust is treated as meeting the requirements of Code § 501(a).

Upon careful consideration of this issue, we believe that it is appropriate to deem a plan that is described in ERISA § 1022(i)(1) as a qualified transferee plan for the limited purposes of complying with Rev. Rul. 67-213 since its associated trust is tax-exempt under Code § 501(a) as if it were a qualified trust described in Code § 401(a). Accordingly, the merger of Domestic Plan and its related trust into the PR Plan and its related trust will not give rise to distributions of the account balances of affected Domestic Plan participants from Domestic Plan's related trust. Because the merger does not give rise to distributions, the account balances at the time that the merger is

consummated will not be treated as includible in participants' income pursuant to Code § 402(a).

Thus, with respect to your ruling requests, we conclude as follows;

1. The merger of Domestic Plan and its related trust into the PR Plan and its related trust will not result in the recognition of income pursuant to § 402(a) of the Code by participants in Domestic Plan whose account balances are "merged" into the PR Plan and its related trust;

2. The merger of Domestic Plan and its related trust into the PR Plan and its related trust will not result in the recognition of income pursuant to § 402(b) of the Code by participants in Domestic Plan whose account balances are "merged" into the PR Plan and its related trust

This ruling letter is based, in part, on the fact that the plan that is described in § 1022(i)(1) of ERISA (the PR Plan) is the transferee plan and not the transferor plan. This ruling letter is also based on the following assumptions:

1) That Domestic Plan is qualified under Code § 401(a), and its related trust is tax-exempt under Code § 501(a) at all times relevant to this ruling;
2) That, as represented, the proposed merger will comply with the requirements of Code § 414(l) and will not otherwise adversely impact the qualified status of Domestic Plan; and
3) That, as represented, the account balances of affected Domestic Plan participants will not, in actuality, be distributed or made available to them within the meaning of Code § 402(b)(2) at all times relevant thereto.

This ruling letter does not address the tax treatment of amounts held in the trust of the PR Plan including, but not limited to, the account balances merged into the PR Plan when they are ultimately distributed or made available in accordance with the applicable terms of the PR Plan. Finally, this letter ruling does not address any issues that may arise from the merger of account balances held in the trust of a plan qualified within the meaning of Code § 401(a) into the trust of a plan not qualified within the meaning of Code § 401(a) which is not deemed qualified for Code § 501(a) purposes by reason of ERISA § 1022(i)(1) and § 1.501(a)-1(e) of the regulations.

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

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Manager, Tax Exempt and
Government Plans Division
Technical Group 3

Enclosures:

Deleted copy of letter ruling
Form 437