200317049

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JAN 30 2003

Universal Issue List: 401.00-00, 4980.00-00

T:EP:RA:T3

Attention:

Legend:

Bank A =

Company B =

Company C =

Company D =

Fund M =

State P =

Plan X =

Dear

This is in response to your request for a ruling, dated September 16, 2002, submitted by your authorized representative, regarding the treatment of stock received under a terminated pension plan as a result of the demutualization of Company B under section 4980 of the Internal Revenue Code (the "Code"). Letters dated November 25, 2002, and January 15, 2003, supplemented the request.

Bank A is the sponsor of Plan X, a defined benefit plan. Plan X was terminated, effective **********,****, by board resolution dated *********,****, which stated that any excess assets were to be used to increase benefits for active plan participants in a manner

consistent with the requirements of the Code. On **********,****, Bank A's Board of Directors executed an amendment to Plan X that provides for the allocation of funds, over and above the amount needed to satisfy all Plan X liabilities, on a non integrated pro-rata basis to each employee who was a participant with an accrued benefit under Plan X as of **********, ****. Bank A received a determination letter stating that the termination did not adversely affect the qualified status of Plan X. Following the distribution and receipt of all required benefit election forms, the assets of Plan X were distributed during 2000, at which time no surplus assets remained. All participants received the full value of their accrued benefits. The final Form 5500 for the plan year ending December 31, 2000, was filed on a timely basis.

In **** Bank A joined with other State P banking institutions who had pooled the assets from their respective retirement plans to form Fund M. Each participating employer's plan was maintained as a single employer plan. The assets of Fund M were invested in group annuity contracts issued either by Company B or Company D, each of which was, at the time of purchase, a mutual life insurance company. During the calendar year ****, Fund M was dissolved, enabling each participating employer's plan to determine its own investment policy. Prior to the distribution of Fund M assets to the participating plans, the group annuity contracts were surrendered and individual annuity contacts were purchased to guarantee the accrued benefits of the participants in the participating plans.

Company B was converted from a mutual life insurance company to a stock insurance company (Company C). Company B completed its conversion from a mutual company to a stock company on **********, ****, and shares of Company C were issued to those individuals or entities who were policy holders on **********, ****. Under the terms of Company B's demutualization plan, the date in which the identity of shareholders was determined caused Fund M to become the shareholder of record with respect to **,*** shares of Company C. By letter dated **********, ****, Bank A was notified that it held **.**% interest in the shares of Company C issued to Fund M, with an approximate market value of $*****,***.** Bank A will request delivery of the shares from Fund M and will establish an account for the sole purpose of holding the stock (or the proceeds therefrom) resulting from the demutualization of Company B. Bank A will not hold or use any of the assets to be held in this account.

Section 11.3 of Plan X, as amended ********, ****, provides that upon termination of Plan X, the rights of each affected participant to benefits accrued to the date of termination shall become vested to the extent funded. Under this section, after the allocation of Plan X's assets pursuant to Plan X's termination, if surplus assets remain after full satisfaction of all plan liabilities, such surplus shall be further allocated among Plan X participants in the proportion that the present value of the portion of such participant's accrued benefit bears to the total accrued benefits of all participants. Under the terms of Plan X, the "Accrued Benefit" is determined, in part, by establishing a fraction where the numerator is the total number of a participant's years of participation in Plan X and where the denominator is the total number of years of participation in the plan that the participant would have had if he or she had participated in Plan X to normal retirement age. This allocation was made prior to the receipt of any funds from the demutualization of Company B. Bank A does not wish to receive any reversion of this surplus, but will use all proceeds from the sale of the stock issued by Company C to benefit participants in Plan X. Accordingly, Bank A proposes to amend Plan X to increase the benefits of Plan X participants and beneficiaries as of the

termination date of Plan X to the extent that, after any expenses associated with the calculation and distribution of such benefit increases are paid, no proceeds from the stock issued by Company C will remain and Bank A will not be subject to an excise tax under section 4980 of the Internal Revenue Code. Bank A will insure that such increases do not cause Plan X to fail to satisfy qualification requirements, including the requirement that benefits be nondiscriminatory in amount and do not exceed the limitation of section 415 of the Code.

Based on the foregoing, you request the following rulings:

1. The proceeds realized as a result of the receipt and subsequent sale of Company C stock may be treated as assets of Plan X and may be used to increase benefits of participants and beneficiaries of Plan X.

2. If all proceeds resulting from the receipt and subsequent sale of Company C stock are used to increase benefits of Plan X participants and beneficiaries and to pay any expenses associated with the calculation and distribution of such benefit increases, then a reversion to Bank A will not occur, and Bank A will not be subject to an excise tax under section 4980 of the Code with respect to such proceeds.

Section 4980 of the Code provides rules for the tax applicable on the reversion of qualified plan assets to an employer. Section 4980(a) provides for the imposition of a tax of 20 percent of the amount of any employer reversion from a qualified plan. Section 4980(b) provides that the tax under section 4980(a) is to be paid by the employer maintaining the plan. Section 4980(d) provides, in general, that section 4980(a) is applied by substituting "50 percent" for "20 percent" with respect to any employer reversion from a qualified plan unless (A) the employer establishes or maintains a qualified replacement plan, or (B) the plan provides benefit increases meeting the requirements of section 4980(d)(3).

Section 4980(c)(2)(A) of the Code provides that the term "employer reversion" means the amount of cash and the fair market value of other property received (directly or indirectly) by an employer from the qualified plan. Section 4980(c)(2)(B)(i) provides that the term employer reversion does not include, except as provided in regulations, any amount distributed to or on behalf of any employee (or his beneficiaries) if such amount could have been so distributed before termination of such plan without violating any provision of section 401.

Section 401(a)(4) of the Code and the regulations thereunder provide that qualified plans must not discriminate in favor of highly compensated employees (within the meaning of section 414(q)).

Section 401(a)(16) of the Code provides that a qualified plan must not provide for benefits or contributions that exceed the limitations of section 415.

Plan X was terminated, effective **********, ****, by a board resolution on *********, *****, which stated that any excess assets were to be used to increase benefits for active plan participants in a manner consistent with the requirements of the Code. Plan X was amended on **********, ****, to increase benefits effective **********, ****. Following the termination, all of Plan X's assets were distributed and all participants received the full value

of their accrued benefits. Following the distributions, there are no surplus assets that could revert to Bank A.

All of the assets of Plan X were invested in individual annuity contracts of Company B. Following the termination of Plan X and distribution of assets, the mutual life insurance company that had held Plan X's assets, Company B, became a stock insurance company, Company C.

On **********, ****, Bank A was notified that it held *.**% interest in the shares of Company C issued to Fund M, with an approximate market value of $***,***.** Bank A will request delivery of the shares from Fund M and will establish an account for the sole purpose of holding the stock (or the proceeds therefrom) resulting from the demutualization of Company B. Bank A will not hold or use any of the assets to be held in this account. Because the assets resulting from the demutualization of Company B were not known or held by Plan X at the time of the termination, the assets could not be distributed to participants at that time.

Section 11.3 of Plan M, as amended ********, ****, provides that upon termination of Plan X, the rights of each affected participant to benefits accrued to the date of termination shall become vested to the extent funded. Under this section, after the allocation of Plan X's assets pursuant to Plan X's termination, if surplus assets remain after full satisfaction of all plan liabilities, such surplus shall be further allocated among Plan X participants. Bank A does not wish to receive any reversion of the surplus funds received as a result of the demutualization of Company B, but will use all proceeds from the sale of the stock issued by Company C to benefit participants in Plan X. Bank A proposes to amend Plan X to increase the benefits of Plan X participants and beneficiaries as of the termination date of Plan X to the extent that, after any expenses associated with the calculation and distribution of such benefit increases are paid, no proceeds from the stock issued by Company C will remain. Bank A will insure that such increases do not cause Plan X to fail to satisfy qualification requirements, including the requirement that benefits be nondiscriminatory in amount and do not exceed the limitation of section 415 of the Code. It has been represented that under Plan X the increase of the benefits to Plan X participants and beneficiaries as of the termination date of Plan X will be allocated in a manner that satisfies section 401(a) of the Code and recognizes length of service. After any expenses associated with the calculation and distribution of such benefit increases are paid, no proceeds from the stock issued by Company C will remain in Plan X, and no assets will revert to Bank A.

Under 4980(c)(2)(A) of the Code, an employer reversion is defined as the amount of cash and the fair market value of other property received (directly or indirectly) by an employer from a qualified plan. The assets resulting from the demutualization of Company B, subsequent issuance of Company C stock on behalf of Plan X, and sale of such stock, may be treated as assets of Plan X for purposes of section 4980 of the Code. Because Plan X is treated as having assets, it is possible for the participants of Plan X to receive these assets if participants' benefits under Plan X are increased. For purposes of section 4980, the assets held in the account created solely to hold such assets are treated as assets held by a defined benefit plan. For these purposes, Plan X will be treated as still existing and may increase benefits, provided such increases do not cause the plan to fail to satisfy qualification requirements, including the requirements that benefits be nondiscriminatory in amount, and not exceed the limitations of section 415. Section 4980(c)(2)(B)(i) provides that the term

employer reversion does not include amounts distributed to or on behalf of any employee (or his beneficiaries) if such amounts could have been so distributed before termination of the plan without violating section 401. Since Plan X will be amended to increase benefits and provided that such increases do not violate section 401(a), the assets of Plan X may be distributed to the participants and beneficiaries of Plan X, and such distributions will be treated as distributions from Plan X, eligible for the same tax treatment as other distributions from Plan X. Because Bank A will not receive any surplus amounts from Plan X, following such distributions, no reversion subject to tax under section 4980 will occur.

Accordingly, we conclude with respect to your ruling requests, that:

1. The proceeds realized as a result of the receipt and subsequent sale of Company C stock may be treated as assets of Plan X and may be used to increase benefits of participants and beneficiaries of Plan X, and

2. If all proceeds resulting from the receipt and subsequent sale of Company C stock are used to increase benefits of Plan X participants and beneficiaries and to pay any expenses associated with the calculation and distribution of such benefit increases, then a reversion to Bank A will not occur, and Bank A will not be subject to an excise tax under section 4980 of the Code with respect to such proceeds.

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

This ruling is based on the assumption that Plan X will at all times relevant to the transactions described above, remain qualified under section 401(a) of the Code.

A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions, please call ********** (ID **-*******) at (***) ***-**** (not a toll free number).

Sincerely Yours,

Frances V. Sloan

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

Enclosures:
Notice of Intention to Disclose
Deleted Copy of Ruling

CC: