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

TAX EXEMPT AND
OOVERNMENT ENTITIES
DIVISION

SIN 9100.00-00

JAN 9 2004

T:EP:RA:T2

Attention:

LEGEND:

Company M =

Group N =

Company O =

Company P =

Dear

This letter is in response to a request for a private letter ruling dated August 6, 2003, as supplemented by correspondence dated December 22, 2003, submitted on your behalf by your authorized representative in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations (the "Regulations"). Specifically, your request for relief relates to the filing of the election provided for in section 3 of Revenue Procedure 93-40, 1993-2 C.B. 535 ("Rev. Proc. 93-40") to be treated as operating qualified separate lines of business ("QSLOBs") under section 414(r)(2) of the Internal Revenue Code (the "Code") of 1986, as amended.

The following facts and representations support your request for relief.

Company M is the U.S. parent of the U.S. members of Group N, an international financial services group that has a large number of United States subsidiaries that are engaged in various financial service activities, such as banking, insurance, investment banking, real estate, asset management and brokerage. These businesses are conducted in the United States through numerous business entities, each of which is engaged in a different aspect of the business. The U.S. members of Company M of Group N sponsor many different retirement plans intended to be tax qualified under section 401(a) of the Code. These plans offer different benefits and cover employees engaged in different activities.

In order for the plans to comply with the coverage requirements of section 410(b) of the Code, it has been necessary to utilize the qualified separate line of business provisions of section 414(r) and the regulations thereunder. The arrangement of Group N members in different separate lines of business periodically change and this requires Group N to file a new Form 5310-A Notice of Qualified Separate Lines of Business pursuant to section 1.414(r)-4(c) of the Federal Income Tax Regulations (the "regulations").

In January 2002, Company M replaced Company O with Company P as its professional advisor engaged to perform nondiscrimination testing on behalf of all of the qualified plans maintained by Group N members in the United States. Company P was also responsible for making related filings.

Company P was aware throughout 2002 that Group N had consistently utilized the QSLOB rules under section 414(r) of the Code to satisfy the coverage tests under section 410(b) of the Code and that it would be necessary to do so for the 2001 plan year. Company P was also aware that changes in the demographics of group members would most likely require a QSLOB approach for 2001 different to that used in 2000, thereby necessitating the filing of a new Form 5310-A. Company P was aware that the deadline for filing the Form 5310-A for 2001 was October 15, 2002.

Company M used reasonable care to ensure that the Form 5310-A filing was timely made. The attorney who provides benefits counsel to two members of Group N has submitted an affidavit asserting that he contacted Company P numerous times to confirm that Company P would prepare and deliver Form 5310-A to Company M and on October 8, 2002 was advised that Company P was in the process of preparing the Form 5310-A for filing and that Company P expected that the Form 5310-A would be timely filed. On October 16, 2002, the attorney discovered that Company P had not prepared and delivered Form 5310-A to Company M. The consulting actuary and principal at Company P responsible for managing Company P's relationship with Company M has submitted an affidavit verifying that the employee responsible for performing nondiscrimination testing for the U.S. members of Group N was aware that a new Form 5310-A needed to be filed, and that the deadline for filing was October 15, 2002. He further asserts that Company P did not send the Form 5310-A to Company M for signature and filing on or before October 15, 2002 and that Company P hand delivered the completed Form 5310-A to Company M for execution, which was filed on October 16, 2002.

Based on the above, you, through your authorized representative, request the following ruling:

That good cause has been shown for the failure to timely make the election provided in section 3 of Rev. Proc. 93-40 and further, that the other requirements of section 301.9100-1 of the Regulations have been satisfied. Accordingly, the Form 5310-A for the 2001 testing year that was filed on October 16, 2002, will be accepted as timely filed.

Section 414(r)(Subtitle A) of the Code provides rules for determining whether an employer operates qualified separate lines of business for purposes of section 129(d)(8) and 410(b) of the Code. In general for purposes of section 129(d)(8) and 410(b) of the Code an employer shall be treated as operating separate lines of business during any year if the employer for bona fide business reasons operates separate lines of business. An employer operating QSLOBs will be permitted to apply those Code provisions separately with respect to the employees in each qualified separate business line. Section 414(r)(2)(B) of the Code requires that an employer notify the Secretary of the Treasury that it intends to operate its lines of business as separate for purposes of Code sections 129(d)(8) and 410(b).

Section 3 of Rev. Proc. 93-40 sets forth the exclusive rules for satisfying the notice requirement of section 414(r)(2)(B) of the Code. Section 3.03 of Rev. Proc. 93-40 provides that the notice must be given by filing Form 5310-A. Section 3.05 of Rev. Proc. 93-40 provides that notice for a testing year must be given on or before the Notification Date for the testing year. The Notification Date for a testing year is the later of October 15 of the year following the testing year or the 15th day of the 10th month after the close of the plan year of the plan of the employer that begins earliest in the testing year. Section 3.06 of Rev. Proc. 93-40 provides, in pertinent part, that after the Notification Date, notice cannot be modified, withdrawn or revoked and will be treated as applying to subsequent testing years unless the employer takes timely action to provide a new notice.

Under section 301.9100-1(c) of the Regulations the Commissioner of Internal Revenue may grant a reasonable extension of time to make a regulatory election, or certain statutory elections under Subtitle A of the Code if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting the relief will not prejudice the interests of the government. Section 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. Notice that an employer has elected to be treated as operating qualified separate lines of business pursuant to section 414(r) of the Code and section 3 of Rev. Proc. 93-40 is a regulatory election.

The Commissioner has authority under section 301.9100-1 and 301.9100-3 of the Regulations to grant an extension of time if a taxpayer fails to file a timely notice of election under section 3 of Rev. Proc. 93-40. Section 301.9100-3 provides that the Commissioner will grant an extension of time when the taxpayer has acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

Section 301.9100-3 of the Regulations provides that applications for relief that fall within section 301.9100-3 of the Regulations will be granted when the taxpayer provides evidence (including affidavits described in section 301.9100-3(e)(2) of the Regulations) to establish that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief would not prejudice the interests of the government.

Section 301.9100-3(b)(1) of the Regulations provides that a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer:

(i) Requests relief under this section before the failure to make the regulatory election is discovered by the Service;

(ii) Failed to make the election because of intervening events beyond the taxpayer's control;

(iii) Failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election;

(iv) Reasonably relied on the written advice of the Service; or

(v) Reasonably relied on a qualified tax professional including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(c) of the Regulations provides that ordinarily the interests of the Government will be treated as prejudiced and that ordinarily the Internal Revenue Service will not grant relief when tax years that would have been affected by the election had it been timely made are closed by the statute of limitations before the taxpayer's receipt of a ruling granting relief under this section or if granting relief would result in a taxpayer having a lower tax liability.

Company M's request contains detailed affidavits describing the events that led to the failure to give timely notice of it's QSLOB election and the discovery of the failure. Company M used Company P, a professional advisor, to perform its nondiscrimination testing and make its related filings, including filing Form 5310-A. Company M was informed by Company P that the Form 5310-A would be timely filed. Further, Company P was aware that the deadline for filing Form 5310-A for 2001 was October 15, 2002, and did not deliver the completed form to Company M until October 16, 2002. Company M's Form 5310-A was filed on October 16, 2002, one day after the October 15, 2002 deadline. Under section 301.9100-3(b)(1)(i) of the Regulations, Company M is deemed to have acted reasonably and in good faith because Company M has requested relief before the failure to make the regulatory election in a timely fashion was discovered by the Internal Revenue Service. Additionally, pursuant to section 301.9100-3(b)(1)(v) of the Regulations, Company M is deemed to have acted in good faith since it relied on a qualified tax professional, Company P, to prepare the election form in a timely fashion as specifically requested by Company M and Company M's representative. The 2001 plan year is within the statute of limitations.

With respect to your request for relief, we believe that, based on the information submitted and the representations contained herein, good cause has been shown for the failure to timely make the election provided in section 3 of Rev. Proc. 93-40, and further, that the other requirements of section 301.9100-1 of the Regulations have been satisfied. Accordingly, the Form

5310-A, which was filed on October 16, 2002, will be deemed timely filed.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter 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.

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 concerning this ruling, please contact SE:T:EP:RA:T2, at

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd.
Manager, Employee Plans
Technical Group 2

Enclosures:
Deleted copy of letter ruling
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