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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG - 3 2004

UICs: 401.00-00
402.08-00
402.08-02

T:EP:RA:T3

LEGEND:

Company A:

Government Agency B:

Trust Agreement F:

Individual D:

Individual E:

Plan X:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Date 8:

Date 9:

Date 10:

Date 11:

Calendar Year 1:

Number N:

Amount T:

This is in response to the _____, letter filed by your authorized representative on your behalf, as supplemented by correspondence dated _____, in which you request letter rulings under sections 401(a) and 402 of the Internal Revenue Code. The following facts and representations support your ruling request.

Plan X was established effective Date 9, _____. Plan X is a defined benefit plan qualified within the meaning of Code § 401(a). Because of a contractual relationship with Government Agency B, Company A became the sponsor of Plan X effective Date 10, _____.

During Calendar Year 1, Company A decided to terminate Plan X effective Date 1, _____. In order to accomplish Plan X's intended termination, Company A distributed all amounts which it believed were due affected Plan X participants. Said distribution(s) occurred no later than Date 2, _____. Company A received no amounts from Plan X as a result of its actions that were intended to terminate Plan X. Company A remains in existence.

On Date 3, _____ the Pension Benefit Guaranty Corporation (hereinafter PBGC) initiated an audit of Plan X's termination. On Date 4, _____, Company A responded to PBGC's audit. On Date 5, _____, the PBGC advised Company A that Plan X was required to recalculate the amount(s) of benefits paid to affected Plan X participants. On Date 6, _____, Company A requested that the PBGC reconsider its Date 5, _____ decision. On Date 7, _____ the PBGC denied Company A's request for reconsideration. On Date 8, _____ the PBGC approved Company A's calculations of additional amounts due affected Plan X participants.

Thus, pursuant to the PBGC's action and decision, Company A has not distributed to affected Plan X participants all amounts due them under Plan X and payable to them as a result of Plan X's planned termination.

Your authorized representative has asserted on your behalf that the PBGC's decision was based on its finding that Company A's actuary used a method to compute monthly accrued benefit offsets for employee contribution refunds that was not in compliance with § 411(c)(2)(B) of the Code. Company A's actuary used a 5% interest rate assumption and the U84 mortality table instead of the interest rate required under Code § 417(e)(3).

The information submitted with your ruling request indicates that approximately Number N Plan X participants were affected by the PBGC's action. As of August 31, 2003, the amount due affected Plan X participants was approximately Amount T.

On Date 11, , Company A's Board of Directors unanimously entered into Trust Agreement F whereby Individuals D and E were appointed trustees of a trust created to hold amounts due affected Plan X participants because of the PBGC action outlined above. Individual D is a member of Company A's Board of Directors.

Trust Agreement F provides, in pertinent part, that the trust and trustees are subject to the rules and regulations set forth in the Employee Retirement Income Security Act of 1974, as amended, (ERISA). Trust Agreement F also provides, in pertinent part, that the trust created under its terms will terminate "...upon the final benefit payment to the last Plan X participant or beneficiary". Finally, Trust Agreement F provides, in pertinent part, that "In directing the Trustees to make payments out of the Trust, the Company will follow the provisions of the Plan and will not direct that any payment be made, either during the existence or upon the discontinuance of the Plan, which would cause any part of the trust to revert to the Company or to be used for or diverted to purposes other than for the exclusive benefit of participants or their beneficiaries pursuant to the provisions of the Plan..."

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

- (1) That the trust created under the terms of Trust Agreement F constitutes a trust of Plan X and, as such, is exempt from tax pursuant to Code § 501(a);
- (2) That distributions from the trust created under the terms of Trust Agreement F qualify for treatment in accordance with the provisions of Code § 402;
- (3) That distributions from the trust created under the terms of Trust Agreement F to affected Plan X participants are eligible for tax-deferred rollover treatment pursuant to Code section 402(c); and
- (4) That the 60-day rollover period prescribed in Code section 402(c)(3) commences from the date a distribution from the trust created under the provisions of Trust Agreement F is received by the payee or distributee thereof.

With respect to your ruling requests, Code § 401(a) sets forth certain rules governing the qualification of employer sponsored retirement plans. Code § 501(a) provides, in relevant part, that an organization described in § 401(a) shall be exempt from taxation under Subtitle A unless such exemption is denied under § 502 or 503.

§ 402(a)(1) provides that, except as otherwise provided in this section, any amount actually distributed to any distributee by an employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 (relating to annuities).

Code § 402(c)(1) provides that, if an employee transfers any portion of an eligible rollover distribution into an eligible retirement plan, the amount so transferred shall not be includible in income for the taxable year in which paid.

Code § 402(c)(4) provides that an "eligible rollover distribution" is a distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust; except that such term shall not include

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made-

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

(ii) for a specified period of 10 years or more,

(B) any distribution to the extent such distribution is required under section 401(a)(9), and

(C) any distribution which is made upon hardship of the employee.

Code § 402(c)(8)(B) defines an eligible retirement plan to include, an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b); a qualified trust, and an annuity plan described in Code section 403(a).

Code § 402(c)(3) provides, generally, that § 402(c)(1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

In this case, affected Plan X participants, referenced above, were entitled to receive distributions from Plan X as part of Company A's intended termination of Plan X. The affected Plan X participants received distributions which the PBGC asserted were less than the distributions to which they were entitled under the provisions of Plan X. The amounts which Company A either has entrusted or will entrust to the trustees of the trust created under the terms of Trust Agreement F represent amounts to which they were entitled under the provisions of Plan X and which they would have received no later than Date 2, if Plan X's actuary had not used inappropriate interest rate and mortality assumptions.

Code § 402(c), by its terms, refers to distributions made from a Code § 401(a) retirement plan. Although the distributions referenced in this case will be made from the trust created under the terms of Trust Agreement F, it is reasonable to characterize them as consisting of amounts which, in the absence of the conduct alleged in the PBGC complaint against Company A referenced above, would have been paid participants in Plan X, which is a Code § 401(a) plan, directly from the trust thereof.

However, even if the Trust Agreement F trust holds amounts due affected Plan X participants, the issue remains as to whether said Trust Agreement F distributions should be treated as being made from said Plan X and, therefore, eligible for Code § 402(c) treatment. The facts of this case indicate that the Trust Agreement F trust was created by Company A as a result of a directive from the PBGC to pay additional amounts to affected Plan X participants. Furthermore, although Company A intended to terminate Plan X during Calendar Year 1, it is apparent that Company A was not successful in distributing all of Plan X's assets by its target date due to the actions of Plan X's actuary. Thus, we believe that it is appropriate to treat the trust created under the terms of Trust Agreement F as holding Plan X assets and to treat the amounts which will be distributed from said trust to affected Plan X participants as being paid directly from Plan X as long as the plan is updated to meet current qualification requirements. As a result, we believe it is appropriate for distributions from said Trust Agreement F trust to qualify for Code § 402(c) treatment as if they came directly from the trust of Plan X.

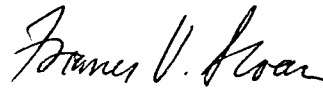
Thus, with respect to your ruling requests, we conclude as follows:

- (1) That the trust created under the terms of Trust Agreement F constitutes a trust of Plan X and, as such, is exempt from tax pursuant to Code § 501(a);
- (2) That distributions from the trust created under the terms of Trust Agreement F qualify for treatment in accordance with the provisions of Code § 402;
- (3) That distributions from the trust created under the terms of Trust Agreement F to affected Plan X participants are eligible for tax-deferred rollover treatment pursuant to Code § 402(c); and
- (4) That the 60-day rollover period prescribed in Code § 402(c)(3) commences from the date a distribution from the trust created under the provisions of Trust Agreement F is received by the payee or distributee thereof.

This ruling letter assumes that Plan X was and is qualified under Code section 401(a) at all times relevant thereto. It also assumes that each affected Plan X participant referenced herein received a distribution (or distributions) from Plan X as asserted. Finally, it assumes that the Trust Agreement F trust either holds or will hold solely amounts intended to comply with the directive of the PBGC, referenced above, and earnings thereon.

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

Sincerely yours,



Frances V. Sloan, Manager,
Employee Plans Technical Group 3

Enclosures:

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Form 437