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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG - 4 2005

Uniform Issue List: 9100.00-00

T:EP:RA:T3

Legend:

Company A	=	***
Company B	=	***
Company C	=	***
Line of Business D	=	***
Plan D	=	***
Consultant X	=	***
Accounting Firm Y	=	***
Law Firm Z	=	***
Date 1	=	***

Dear ***:

This is in response to the November 24, 2004, letter submitted on your behalf by your authorized representative, supplemented by correspondence dated March 25, 2005, May 6, 2005, and June 7, 2005, in which you request an extension of time pursuant to section 301.9100-1 of the Procedure and Administration Regulations to file the notice of election described in section 3 of *Revenue Procedure 93-40, 1993-2 C.B. 535* to be treated as operating qualified separate lines of business ("QSLOBs") under *section 414(r)(2) of* the Internal Revenue Code (the "Code") and sections 1.414(r)-1(b) and 1.414(r)-4 of the Treasury Regulations.

The following facts and representations have been submitted in support of your ruling request for an extension:

Company A and its two subsidiaries, Company B and Company C, provide engineered products and services for various manufacturers around the world. Company A asserts it maintains two separate lines of businesses due to the separate operations, geographic separation, and the nature and characteristics of the respective products and work forces. Company A maintains different retirement plans for its union and non-union workforces. Company B and Company C, when acquired in 1997 and 2000, respectively, maintained non-union workforces. Company A asserts that no employees in the Company A line of business have ever participated in Company B or Company C's qualified retirement plans. Reciprocally, Company A asserts that no employees in Company B or Company C have ever participated in the qualified retirement plans maintained for the employees in Company A's line of business.

Company A maintains Plan D which is represented to be qualified within the meaning of Code section 401(a). Plan D's plan year is the calendar year.

Company A utilized the services of Law Firm Z to submit its request to the Internal Revenue Service for a GUST determination letter along with Form 5300, Application for Determination for Employee Benefits Plan, with respect to Plan D, which was filed on February 6, 2002.

On or about September 12, 2003, Company A filed a 2002 Form 5500, Annual Return/Report of Employee Benefit Plan, for Plan D, including Schedule T, Qualified Pension Plan Coverage Information, which did not provide answers relating to the various QSLOB questions found on lines 2a through 2d.

On or about September 15, 2004, Company A filed a 2003 Form 5500, Annual Return/Report of Employee Benefit Plan, for Plan D, including Schedule T, Qualified Pension Plan Coverage Information, which did not provide answers relating to the various QSLOB questions found on lines 2a through 2d.

Shortly after October 15, 2004, Company A's management engaged in discussion concerning QSLOB notification requirements with a professional advisor that deals with employee benefits. The advisor inquired whether a filing of Form 5310-A, Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business, had taken place. Company A' s management determined after contacting Consultant X, (which was responsible for the actuarial and reporting matters concerning its defined benefit plan) and Accounting Firm Y, (which was responsible for its financial statement audits) that no Form 5310-A had been filed on behalf of Company A. Although Company A had a general knowledge of the QSLOB rules, Company A states that these late 2004 contacts represented the first time it became aware of the formal notification filing requirement.

Company A has attached affidavits from Consultant X, Accounting Firm Y, and Law Firm Z to this ruling request. Each affidavit contained a statement providing that the respective organization did not advise Company A to make a QSLOB notification filing. Furthermore, an officer of Company A has asserted that Consultant X, Accounting Firm Y, and Law Firm Z neither made the proper QSLOB filing nor advised Company A to make the filing at any time.

Company A subsequently retained legal counsel to assist in reviewing the above matter. Legal counsel determined through data testing that Company A met the QSLOB requirements of Code section 414(r). Legal counsel also concluded that Company A should have filed its initial QSLOB notification for calendar year 2002 no later than October 15, 2003.

Company A filed the Form 5310-A relating to Plan D with the Internal Revenue Service on or about November 10, 2004 with a proposed effective date of January 1, 2002. On the Form 5310-A, Line of Business D was listed as the QSLOB. The Form 5310-A also indicated that Plan D received a Determination Letter on Date 1, 2003.

Based on the above, Company A, through its authorized representative, request the following ruling:

> That under section 301.9100-3 of the Federal Procedure and Administration Regulations the filing of Form 5310-A, as described above, will be deemed as a timely filing for purposes of operating qualified separate lines of business under IRC section 414(r). Thus, Company A will be treated as operating QSLOBs as of January 1, 2002 with respect to Plan D.

In general, for purposes of sections 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. Code section 414(r)(2)(B) (Subtitle A) requires that an employer notify the Secretary of the Treasury that a line of business is being treated 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 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 sections 414(r) of the Code and section 3 of *Rev. Proc. 93-40* is a regulatory election.

The Commissioner has authority under sections 301.9100-1 and 301.9100-3 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)) 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 A's request contains four detailed affidavits describing the events that led to its failure to give the Service timely notice of its QSLOB election, its failure to timely make the election, and of the discovery of its failure. Also, Company A's Form 5500 filings for tax years [redacted] and [redacted] did not contain any data inconsistent with an intent to rely on the QSLOB rules. Company A demonstrated it was relying on Consultant X, Accounting Firm Y and Law Firm Z to advise it of the necessity of a filing to preserve QSLOB treatment, and until October 2004, Company A was not made aware of this necessity. When Company A discovered that the requisite Form 5310-A had not been timely filed, it filed said Form 5310-A on November 10, 2004 and also promptly filed this request for relief under section 301.9100-3 of the regulations.

Thus, with respect to your request for relief we believe that, based on the information submitted and the representations contained herein, there has been compliance with clauses (iii) and (v) of section 301.9100-3(b)(1) of the regulations. As a result, we conclude that good cause has been shown for the failure to timely make the election provided for in section 3 of *Rev. Proc. 93-40,* and further, that the other requirements of section 301.9100-1 have been satisfied. Accordingly, the filing of Form 5310-A as described above to be treated as operating qualified separate lines of business under Code section 414(r) in section 3 of *Revenue Procedure 93-40* will be deemed to be a timely filing.

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

This letter 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 as precedent.

If you wish to inquire about this ruling, please contact ***, at *** or ***. Please address all correspondence to SE:T:EP:RA:T3.

A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of Letter Ruling
Notice of Intention to Disclose, Notice 437