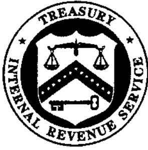


DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 29 2005

Uniform Issue List: 4980.00-00

Attention:

Legend

Union A =

Insurance Company B =

Company C =

Plan X =

Dear

This is in response to your letter dated December 1, 2003, submitted by your authorized representative, in which you requested a ruling concerning sections 401 and 4980 of the Internal Revenue Code (the "Code"). A letter dated December 15, 2004, supplemented the request.

The following facts and representation have been submitted.

Union A maintained Plan X, a multiemployer defined benefit pension plan, within the meaning of section 414(f) of the Code. Plan X was qualified under section 401(a) of the Code, upon its termination, effective January 31, 1987. To effectuate this termination, the assets of Plan X were used to purchase a group single premium guaranteed annuity contract in 1988, from Insurance Company B ("group annuity contract"), with Union A as the contract holder. The purchase of the group annuity

policy resulted in the total liquidation of all the assets in the Plan X trust. All Plan X participants received 100 percent of their accrued benefit on termination through the purchase of the group annuity contract. There has been no activity with regards to Plan X since the purchase of the group annuity.

Effective October 26, 2001, Insurance Company B converted from a mutual insurance holding company into a stock company (Insurance Company C), pursuant to a detailed written plan of conversion. As part of this demutualization, eligible policyholders exchanged their membership interests for shares of Insurance Company C, and all membership interests were terminated.

Eligible policyholders were policyholders with eligible Insurance Company B policies in force on March 31, 2000, one year prior to the adoption of the plan of conversion by the board of directors of Insurance Company B, and who owned an eligible policy or contract continuously from that date until October 26, 2002, the effective date of the demutualization.

In exchange for their membership interests, eligible policyholders received shares of common stock in Company C. The amount of stock received was based on the number of shares allocated to each eligible policyholder. Every eligible policyholder was allocated at least 100 shares, referred to as the "fixed component", regardless of the number or size of policies owned. Additional shares, referred to as the " variable component," were allocated based ,on actuarial formulas that took into account a policy's or contract's past and estimated future contributions to the surplus of Insurance Company B.

Union A, as the contract holder of the group annuity contract during the relevant times under the conversion plan, was an eligible policy holder as described therein. Consequently, as part of this demutualization, Union A received 142,667 shares of Company C stock. The shares were sold on September 26, 2003, and the proceeds are being held in an interest bearing account.

Section 10.3 of Plan X states that upon termination, the assets of Plan X shall be allocated among the participants and their beneficiaries in accordance with the Employee Retirement Security Act of 1974 ("ERISA").

Union A is proposing to amend Plan X to increase benefits of Plan X participants and beneficiaries to the extent that, after any expenses associated with the determination, calculation, and distribution of such benefit increases are paid, no proceeds from the stock issued by Insurance Company C remain.

Once Plan X is amended, Union A proposes to give each annuitant under the group annuity contract the option to either (i) receive a cash distribution, or (ii) increase his or her existing annuity benefits from Insurance Company B in an amount equal to the proceeds from the sale of the stock, minus all expenses associated with the

determination, calculation, and distribution of such benefits increases as determined by Insurance Company C.

Based on the foregoing, the following rulings are requested.

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 Plan X may be amended, effective January 31, ■■■■, to increase benefits of each participant and beneficiary whose membership in the group annuity contract as of March 31, ■■■■, resulted in the issuance of stock to Union A.

2. That the proceeds from the sale of the stock, minus all expenses associated with the determination, calculation, and distribution of such benefit increases, may be allocated to each such participant and beneficiary based on the percentage allocation determined by Insurance Company C.

3. That each such annuitant may elect to receive his or her benefit by either (i) receiving a cash distribution, or (ii) increasing his or her existing annuity benefits with Insurance Company C.

4. That, if the proceeds are used to increase benefits as provided above, a reversion of surplus assets to Union A will not occur, and Union A will not be subject to an excise tax under section 4980 of the Code.

5. That the amendment to Plan X will not affect the plan's qualified status under section 401(a) of the Code.

6. That the amendment to Plan X will not result in the plan being reactivated thereby subjecting Plan X to reporting, disclosure, and re-termination requirements.

Section 401(a) provides that a trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or beneficiaries shall constitute a qualified trust under this section if the requirements of sections 401(a)(1) through 401(a)(34) are met, as applicable.

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.

Plan X was terminated in . All obligations and claims under Plan X were satisfied in , prior to the demutualization. Such obligations and claims of the participants and beneficiaries were met by the distributions of annuities from Plan X, through Union A's purchase of the group annuity contract. This purchase resulted in the total liquidation of Plan X assets, and all liabilities of Plan X were transferred from Plan X to the annuity provider. Since that time, no activity has taken place with regards to Plan X. The shares of Company C stock received by Union A in September were received by Union A solely as a consequence of its status as policyholder of the group annuity contract. Since the Plan X trust was not in existence at the time of the demutualzation of Insurance Company B, and all obligations and claims of Plan X were satisfied prior to the demutualization, such shares cannot be considered assets of Plan X.

Accordingly, with regard to ruling request one, the proceeds realized as a result of the receipt and subsequent sale of Company C stock may not be treated as assets of Plan X. Consequently, Plan X may not be amended to increase benefits as a result of the demutualization proceeds. Thus, your fifth and six ruling requests are considered moot.

Because Plan X is treated as not having assets, it is not possible for the participants of Plan X to receive these assets under Plan X. With respect to ruling request number four, since the proceeds are not considered plan assets such receipt by Union A does not constitute a reversion of plan assets under section 4980.

Regarding your second and third ruling request, whether shares received as part of the demutualization are the property of Union A, as policy holder under the group annuity contract, or the annuitants under the group contract is a matter of state or other applicable law, not the Internal Revenue Code, and therefore we express no opinion.

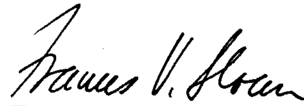
We note that you have applied to the Department of Labor regarding ruling requests one, two, three and six above, concerning issues relating to Title I of ERISA

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 letter (original) is being sent to your authorized representatives 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, Manager
Employee Plans Technical Group 3

Enclosures:
Notice of Intention to Disclose
Deleted Copy of Ruling

CC: