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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

OCT 12 2005

U.I.L. 0072-00-00

SE: T. EP. RA. T2

Attention: *****

Legend:

Participant A = *****

Employer M = *****

Plan X = *****

Dear *****:

This letter is in response to your letter dated May 26, 2004, which was received in our office on August 5, 2004, and supplemented by correspondence dated October 4, 2005, submitted on your behalf by your authorized representative in which you request a ruling concerning a proposed loan from Plan X under section 72(p) of the Internal Revenue Code.

Employer M participates in Plan X, which you describe as a multiple employer plan that you represent meets the requirements of Code section 401(a). Plan X's most recent favorable determination letter is dated November 14, 2002.

Under the terms of Plan X, an individual account is established for each participant. Plan X provides that a participant's right to his or her accrued benefits derived from contributions are fully vested when those contributions are received and credited to his or her individual account.

In January 1999, the Board of Trustees of Plan X amended it to allow participants to make loans from Plan X. You represent that Plan X, after adoption of the loan program, has made loans to participants and that some participants have defaulted on those loans.

In January 2004, Participant A made a request to receive a loan from Plan X. Participant A, prior to January 2004, defaulted on a loan and it was deemed distributed under section 1.72(p)-1, Q&A-4 of the Income Tax Regulations. You represent that the current loan request made by Participant A meets the requirements of Code section 72(p)(2)(A). However, a question has arisen as to whether or not Participant A's receipt of funds from the pending loan request will be treated as a loan that satisfies Code section 72(p)(2)(A) unless repayment is made by payroll withholding and adequate security is received from Participant A in accordance with section 1.72(p)-1, Q&A-19(b)(2) of the regulations, even though prior to January 1, 2004, Participant A defaulted on a loan which was deemed distributed.

Code section 72(p)(1)(A) provides that if during any taxable year a participant or beneficiary receives (directly or indirectly) any amount as a loan from a qualified employer plan, such amount shall be treated as having been received by such individual as a distribution under the plan. Code section 72(p)(2) provides, in general, that paragraph (1) shall not apply to any loan to the extent that such loan does not exceed a certain dollar amount, is required to be repaid within five years (unless such loan is used to acquire a dwelling unit), and requires substantially level amortization of such loan over the term of the loan.

Section 1.72(p)-1, Q&A-19(b)(2) of the regulations provides that if a loan is deemed distributed to a participant or beneficiary under section 72(p) and has not been repaid (such as by a plan offset), then no payment made thereafter to the participant or beneficiary is treated as a loan for purposes of section 72(p) unless the loan otherwise satisfies section 72(p) and this section and either of the following conditions is satisfied:

- (i) There is an arrangement among the plan, the participant or beneficiary, and the employer, enforceable under applicable law, under which repayments will be made by payroll withholding,
- (ii) The plan receives adequate security from the participant or beneficiary that is in addition to the participant's or beneficiary's accrued benefit under the plan.

Section 1.72(p)-1, Q&A-22(d) of the regulations provides, in pertinent part, that section 1.72(p)-1, Q&A-19(b)(2) of the regulations is effective to assignments, pledges and loans made on or after January 1, 2004.

In this case, Participant A has requested a loan from Plan X that you represent meets the requirements for a loan under Code section 72(p)(2)(A). You also represent that Participant A, prior to January 1, 2004, defaulted on a loan and it was deemed distributed under section 1.72(p)-1, Q&A-4 of the regulations.

Assuming Participant A has not repaid the prior loan, a subsequent payment to him would not satisfy the requirements of Code section 72(p)(2) unless the requirements of section 1.72(p)-1, Q&A-19(b)(2) of the regulations are satisfied with respect to the pending loan request even though the default and the deemed distribution of the prior loan all occurred prior to January 1, 2004.

This ruling assumes that Plan X satisfies the requirements for qualification under Code section 401(a) at all times relevant to this transaction. This ruling does not express an opinion as to whether the proposed loan would result in a prohibited transaction under Code section 4975.

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

This letter is directed only to the taxpayer that 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 ruling is being sent to your authorized representative pursuant to a power of attorney (Form 2848) on file in this office.

If you have any questions about this ruling, please contact
*****SE:T:EP:RA:T2.

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted Copy of this Ruling
Notice of Intention to Disclose