200426027

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UICs: 401.01-01
72.20-00
401.10-03
3405.00-00

MAR 3 0 2004

ATTN:
Assistant Tax Officer

LEGEND:

Beneficiary A:

Participant B:

Participant C:

State T:

Company M:

Company N:

Bank O:

Company P:

Judge Q:

Type R:

Crime S:

Case 1:

Case 2:

Case 3:

Plan W :

Plan X:

Trust Y:

Court AA:

Court BB:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Date 8:

Date 9:

Date 10:

Year 1:

Year 2:

Year 3:

Year 4:

Sum 1:

Sum 2:

Sum 3:

Sum 4:

Sum 5:

Sum 6:

Sum 7:

Sum 8:

Sum 9:

Sum 10:

Percent 1:

Ladies and Gentlemen:

This is in response to the , letter submitted on your behalf by your authorized representative, as revised by correspondence dated , and as supplemented by correspondence dated , in which you request a series of letter rulings under §§ 401(a)(13), 401(a)(2), 72(t), 402(c)(4), 402(f) and 3405(c)(1) of the Internal Revenue Code of 1986 ("Code") with respect to the transactions described herein. The following facts and representations support your ruling requests.

Company M, which is a Type R business, and which has its principal office in State T, maintains Plan X, a collectively bargained defined contribution retirement plan, and Plan W, a collectively bargained defined benefit retirement plan. Plan X holds both pre-tax and after-tax contributions. Pursuant to the terms of Plan X, a retiree may elect to receive some or a portion of his/her account balance on any business day. Terminated Plan X participants or active Plan X participants who have attained age 59 ½ may receive benefits in monthly, quarterly, semi-annual or annual installments for a period certain of at least one year and not exceeding life expectancy (or joint life expectancy).

Your authorized representative asserts that Plans X and W are qualified within the meaning of Code § 401 (a) and their trusts are tax-exempt pursuant to Code § 501(a).

This ruling request pertains to the following three cases in which the United States

Government obtained garnishment orders against the affected individuals.

Case 1: Beneficiary A currently receives a pension from Plan W as the surviving spouse of a deceased Plan W participant. Beneficiary A was convicted of possession of stolen mail pursuant to 18 U.S.C. § 1708 in federal district court during . The mail contained funds owing to State T in the amount of Sum 1, to Company N in the amount of Sum 2, to Bank 0 in the amount of Sum 3, and to the Internal Revenue Service ("Service") in the amount of Sum 4. Beneficiary A was ordered to pay restitution in the amount of Sum 5, the sum of Sums 1 through 4.

On Date 1, Year 1, the United States Government filed an Application for Writ of Continuing Garnishment (sometimes hereinafter "Garnishment") stemming from Beneficiary A's conviction and related order of restitution. A final Order, dated Date 2, Year 2, permitted garnishment of Beneficiary A's interest in and annuity payments from Plan W. Plan W is withholding the disputed portion of Beneficiary A's monthly benefit and is placing said portion in escrow within Trust Y. Employer M appealed Case 1, which was decided by Court AA, to Court BB, the appropriate United States Circuit Court, on Date 3, Year 2. Case 1 is pending before Court BB.

Case 2: Participant B, a retired Plan W participant, was convicted in Year 3 of one count of Crime S under 18 U.S.C. § 371, and ordered to pay restitution to the United States Government in the amount of Sum 6 plus interest. On Date 4, Year 2, the United States Government served a Writ of Continuing Garnishment on Plan W to collect the court ordered restitution. As of Date 5, Year 1, the amount owing was Sum 7, which included interest on Sum 6.

Participant B presently receives benefits from Plan W of Sum 8 per month in the form of an annuity for life, with a survivor benefit in the amount of Sum 9 per month payable to Participant B's spouse if she survives him.

Company M has stopped paying the disputed amount of Plan W monthly benefits to Participant B and has, instead, escrowed said benefits pursuant to an agreement with the United States Attorney. On Date 6, Year 2, Judge Q entered an opinion and order in Case 2, which held that the United States Government was entitled to employ a Garnishment to collect the criminal restitution owed by Participant B. On Date 7, Year 2, Judge Q issued an Order to Pay directing Plan W to garnish Percent 1 of Participant B's monthly benefit. Employer M appealed Case 2, which was decided in Court AA, to Court BB, the appropriate United States Circuit Court, on Date 8, Year 2, and filed other needed documents with that Court on Date 9, Year 2. Case 2 is pending before Court BB.

Case 3: Participant C is a participant in Plan X who is not yet eligible to receive distributions from said Plan X. On Date 10, Year 4, Participant C was sentenced in federal court

following conviction of cocaine base possession, intent to distribute, and aiding and abetting. Participant C's sentence included a fine in the amount of Sum 10. The United States Government obtained a Writ of Garnishment to collect the fine and served same on Company P, Plan X's record keeper. Company P responded that it was merely the record keeper, and Employer M then intervened, posted a bond in the amount of the fine, and obtained a stay in Case 3 pending resolution of Case 2.

The above-referenced writs of garnishment were obtained pursuant to the procedures authorized by the Federal Debt Collection Procedures Act of 1990 ("FDCPA"), 28 U.S.C. §§ 3001-3308, and the Mandatory Victims Restitution Act, 18 U.S.C. § 3613(c).

Based on the above facts and representations, Company M, through its authorized representative, requested the following rulings:

1. That Company M's honoring of the above-described Orders of Garnishment pursuant to which Company M was ordered to pay a percentage of the annuity payments otherwise payable to either Beneficiary A or Participant B (or Participant B's survivor) under Plan W, or an amount from Participant C's account in Plan X will not result in the failure of either Plan X or Plan W to meet the requirements of Code § 401(a)(13), to the extent that either plan pays some or all of a participant's or beneficiary's benefit to the United States Government when required to do so pursuant to an order of garnishment obtained pursuant to 18 U.S.C. § 3613 and the FDCPA. This conclusion applies regardless of whether the purpose of the garnishment is to collect (a) a fine payable to the United States Government; (b) criminal restitution amounts payable to the United States Government (or any agency or department thereof); (c) criminal restitution amounts payable to the United States Government for the benefit of private parties; or (d) criminal restitution amounts payable to the United States Government for the benefit of a state or local government entity (or any agency or department thereof);

2. That Plan X and Plan W will not violate the exclusive benefit rule of Code § 401(a)(2) when paying some or all of a participant's or beneficiary's benefit to the United States Government when ordered to do so pursuant to an order of garnishment obtained pursuant to 18 U.S.C. § 3613 and the FDCPA. This conclusion applies regardless of whether the purpose of the garnishment is to collect (a) a fine payable to the United States Government; (b) criminal restitution amounts payable to the United States Government (or any agency or department thereof); (c) criminal restitution amounts payable to the United States Government for the benefit of private parties; or (d) criminal restitution amounts payable to the United States Government for the benefit of a state or local government entity (or any agency or department thereof);

3. That a lien created pursuant to 18 U.S.C. § 3613(c) attaches immediately, but the United States Government (i) cannot garnishee or otherwise collect against a plan

participant's or beneficiary's benefit until the participant or beneficiary has a right to a distribution ("Distributable Event") under the terms of either Plan X or Plan W; (ii) steps into the shoes of either the participant or beneficiary and can make an election on his or her behalf when such person is eligible for a distribution but has not elected same; and (iii) is subject to the qualified joint and survivor annuity rules and other plan provisions to the same extent as either the participant or beneficiary;

4. That payments made from either Plan X or Plan W pursuant to the above-referenced orders of garnishment obtained pursuant to 18 U.S.C. § 3613(c) are not subject to the 10-percent additional income tax imposed under Code § 72(t)(1) pursuant to Code § 72(t)(2)(A)(vii); and

5. To what extent, if any, do payments made from either Plan X or Plan W to the United States Government pursuant to the above-referenced orders of garnishment obtained pursuant to 18 U.S.C. § 3613(c) constitute eligible rollover distributions within the meaning of Code § 402(c)(4), such that Company M must (1) provide a written notice to affected plan participants or beneficiaries before making distributions as provided under Code § 402(f); and (2) withhold federal income taxes at the mandatory 20% rate, as required under Code §§ 3405(c)(1) and (d)(2).

With respect to your ruling requests, Code § 401(a)(13) provides, in general, that a trust shall not constitute a qualified trust under Code § 401(a), unless the plan of which the trust is a part provides that benefits under the plan may not be assigned or alienated. A limited exception applies to the voluntary and revocable assignment of up to 10 percent of any benefit payment to a plan participant in pay status.

Code § 401(a)(13) provides exceptions to the anti-alienation rule of Code § 401(a)(13)(A) which are not pertinent in the instant case.

§ 1.401(a)-13(b)(2)(i) of the Income Tax Regulations ("Regulation" or "Regulations") provides that the anti-alienation rule of Code § 401(a)(13) does not apply to the enforcement of a federal tax levy made pursuant to Code § 6331.

§ 1.401(a)-13(b)(2)(ii) provides that the anti-alienation rule of Code § 401(a)(13) does not apply to "the collection by the United States on a judgment resulting from an unpaid tax assessment."

§ 1.401 (a)-13(c)(1)(ii) provides that an assignment or alienation for purposes of Code § 401(a)(13) includes "any direct or indirect arrangement whereby a party acquires a right enforceable against a plan in, or to all, or any part of a plan benefit which may become payable to a participant or beneficiary."

Code § 401(a)(2) provides that a trust is not qualified unless, "under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees or their beneficiaries under the trust, for any part of the corpus or income to be . . . used for, or diverted to, purposes other than for the exclusive benefit of. . . [the] employees or their beneficiaries."

§ 1.401-2(a)(3) of the Regulations provides that the phrase "'purposes other than for the exclusive benefit of his employees or their beneficiaries' includes all objects or aims not solely designed for the proper satisfaction of all liabilities to employees or their beneficiaries covered by the trust."

Code § 6331(a) authorizes the Service to levy upon "all property or rights to property" of a taxpayer to collect delinquent taxes. A levy extends only to property rights and obligations that exist at the time of the levy. Obligations exist for the purpose of a levy when the liability of the obligor is fixed and determinable although the right to receive payment maybe deferred until a later date. (*See* § 301.6331(a) of the Regulations.)

Code § 402(a) provides that distributions from plans qualified within the meaning of Code § 401(a) are taxable to the distributee in the year of distribution under Code § 72. Code § 72(t)(1) imposes an additional 10-percent income tax on the taxable portion of any distribution from a qualified retirement plan, including one qualified within the meaning of Code § 401(a), unless one of the exceptions found at Code § 72(t)(2) applies. Code § 72(t)(2)(A)(vii) exempts from the 10-percent additional tax amounts distributed "on account of a levy imposed under [Code] section 6331 on . . . [a] qualified retirement plan."

Code § 3504(c)(1)(B) requires a plan administrator to withhold 20 percent of any "designated distribution" that is also an "eligible rollover distribution." A "designated distribution" is "any distribution or payment from or under . . . any pension, annuity, profit-sharing, or stock bonus plan." (*See* Code § 3405(e)(5).)

Code § 402(c)(4) provides, in relevant part, that an "eligible rollover distribution" is a "distribution to an employee of all or 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."

For purposes of Code § 402(c)(4), a qualified trust includes the trust associated with a retirement plan qualified within the meaning of Code § 401(a). In general, then, an "eligible rollover distribution" is a taxable distribution to the payee or distributes thereof. Mandatory 20-percent withholding does not apply to an eligible rollover distribution totaling less than $200 after aggregation of all such distributions during a calendar year. (*See* § 31.3405(c)-1 of the Regulations, Question and Answer-14).

The FDCPA is codified at 28 U.S.C. §§ 3001 to 3308. 28 U.S.C. § 3002(3) provides, in relevant part, that a fine is a form of debt subject to collection under the FDCPA.

28 U.S.C. § 3205 provides, in relevant part, that a court may issue a writ of garnishment against property (including nonexempt disposable earnings) in which the debtor has a substantial interest and which is in the possession, custody of a person other than the debtor, in order to satisfy a judgment against the debtor.

18 U.S.C. § 3613(a)(1) provides that the United States may enforce a judgment imposing a fine in accordance with the practices and procedures for the enforcement. of a civil judgment under Federal or State law against all property or rights to property of the person fined except that property exempt from levy for taxes pursuant to §§ 6334(a)(1), (2), (3), (4), (5), (6), (7), (8), (10) and 12 of the Code shall be exempt from enforcement of the judgment under Federal law. None of the above-referenced subsections of Code § 6334(a) apply to pensions or benefits provided under a retirement plan described in Code § 401(a).

28 U.S.C. § 3014(a), in pertinent part, applies the exemptions found under either 11 U.S.C. § 522(d), the Bankruptcy Code, or the law of a debtor's domicile to enforcement actions under the FDCPA.

11 U.S.C. § 522(d)(10)(E), in pertinent part, exempts payments under a "stock bonus, pension, profit-sharing, annuity, or similar plan or contract . . ." which is qualified under either Code § 401(a), 403(a), 403(b) or 408 from a debtor's estate in a bankruptcy action.

18 U.S.C. § 3613(a)(2) provides that 28 U.S.C. § 3014 shall not apply to the enforcement of a fine under Federal law.

18 U.S.C. § 3613(c) provides that a fine imposed as part of a criminal sentence pursuant to the provisions of subchapter C of chapter 227 of Title 18 (§§ 3571, *et seq.*) or an order of restitution made pursuant to that title is a lien in favor of the United States on all property and rights to property of the person fined as if the liability of the person fined were a liability for a tax assessed under the Code.

The Legislative History of 18 U.S.C. § 3613 provides, in relevant part, that criminal fines

are to be treated as if they were debts for delinquent income taxes under the Code. The Legislative History also indicates that the only property exempt from execution for a criminal fine is that property described in 18 U.S.C. § 3613(a)(1), which is a subset of the property exempted from levy for the collection of income taxes under 26 U.S.C. § 6334(a). (*See* H. Rep. No. 98-1030, S. Rep. No. 98-364, and H. Conf. Rep. No. 98-1159, all of which are reprinted at 1984 U.S.C.C.A.N. 3182, 3318-23.)

18 U.S.C. § 3613 and its Legislative History indicate that the United States may enforce a judgment either to collect a criminal fine rendered in its favor or to satisfy an order of restitution against all of a defendant's property except that property which would be exempt from a levy for the payment of federal income taxes. Pursuant to 18 U.S.C. § 3613(a)(1), certain exemptions under Code § 6334(a) apply to actions to enforce a criminal fine. However, a plan participant's interest in a qualified plan does not come within any of the cited Code § 6334(a) exemptions.

Thus, since none of the specific exemptions found in 18 U.S.C. § 3613 applies either to the collection of fines or the enforcement of orders of restitution, said section authorizes the United States to collect a fine or restitution imposed against an affected individual from such individual's interest in a qualified retirement plan. However, an issue then arises as to whether said collection would violate Code § 401(a)(13), which is the subject matter of the first ruling request.

Two recent cases have held that the federal government may enforce orders of restitution against a pension plan without disqualifying the plan. In United States v. Tyson, 265 F. Supp. 2d 788 (E.D. Mich. 2003), a payee under the Ford Motor Company Retirement Trust ("Ford Trust") was convicted in federal court and ordered to pay restitution. The federal government filed an Application for a Writ of Continuing Garnishment under the FDCPA and the Magistrate Judge ruled, in relevant part, that the government was entitled to garnish the payee's interest in the Ford Trust. The District Court upheld the Magistrate's ruling that the government was entitled to garnish the payee's interest in the Ford Trust.

Ford argued that Code § 401(a)(13) prohibited the garnishment since § 1.401(a)-13(b)(2) of the Regulations only exempts federal tax liabilities and not liabilities that are "like" tax liabilities or "similar to" tax liabilities. Tyson Slip. Op. at 4-5. The Court disagreed and held that under the FDCPA, court ordered restitution "is a lien in favor of the United States," and that the liability is treated "as if [it] were a liability" for an assessed tax. Tyson Slip Op. at 6. The Court then held that collection of the ordered restitution falls implicitly within the exception listed in Regulation § 1.401 (a)-13(b)(2)(ii) for "collection by the United States on a judgment resulting from an unpaid tax assessment." Id.

The United States Court for the Eastern District of Michigan also ruled in favor of permitting garnishment in United States v. Clark, No- 02-X-74872 (E.D. Mich., June 11, 2003).

In Clark, a participant in the Ford Motor Company-UAW Retirement Plan was convicted for his involvement in a food stamp fraud conspiracy, sentenced to a term of imprisonment and ordered to pay $240,000 in criminal restitution for the benefit of the U.S. Department of Agriculture. The federal government sought a writ of garnishment against the participant's interest in the plan, arguing that pension benefits are subject to garnishment under the FDCPA for restitution in a criminal case.

Ford argued that criminal restitution is not specifically listed among the exceptions to anti-alienation specified in Code § 401(a)(13) and Regulation § 1.401(a)-13(b)(2). Slip Op. at 4-5. Ford further argued that the exemption for federal tax levies under Regulation § 1.401(a)-13(b)(2) "does not apply to liabilities deemed to be the functional equivalent of tax levies. . . ." Id. The Court rejected Ford's arguments and followed the holding and reasoning of Tyson, a case with similar facts. Slip Op, at 5-6.

The Clark Court also relied on United States v. Rice, 196 F. Supp. 2d 1196, 1201 (N.D. Okla. 2002) which concluded that an ERISA plan was subject to garnishment to satisfy a criminal fine pursuant to the FDCPA. It cited with approval the Rice Court's discussion of Guidry v. Sheet Metal Workers Nat'l Pension Plan, 493 U.S. 365 (1990), in which it distinquished Guidry. The Rice Court reasoned that Guidry left room for Congress to provide exceptions to the anti-alienation rule, and concluded that Congress created such an exception when it enacted the FDCPA. Slip Op. at 7. The Court also held that Guidry did not preclude the Treasury Department and the Service from crafting exceptions to the anti-alienation rule in regulations, such as when Regulation § 1.401 (a)-13(b)(2) was published.

The above-referenced sections of the United States Code indicate that a judgment rendered by a federal court either imposing a fine payable to the United States or enforcing an order of restitution is to be treated as a tax liability. As such, it is a reasonable interpretation of § 1.401(a)-13(b)(2)(ii) of the Regulations that said section authorizes the enforcement of such judgments against a plan participant's or beneficiary's interest in a Code § 401(a) plan, irrespective of the general anti-alienation rule of Code § 401(a)(13).

Thus, after careful consideration, and consistent with the holdings and the rationales of the courts in Tyson and Clark, we are of the opinion that the general anti-alienation rule of Code § 401(a)(13) does not preclude either a court's garnishing the benefit of a fined participant or beneficiary in a qualified pension plan in order to collect a fine imposed in a federal criminal action, or garnishing a benefit to enforce an order of restitution against either a plan participant or beneficiary thereof.

Moreover, our position is not affected where the ultimate beneficiary of a restitution payment collected from a plan as the result of a garnishment order is a private party or state government because 18 U.S.C. § 3613(c) treats restitution payments as if they were liabilities for a tax. Debts originally owed to a private party under a non-governmental contract or to a state

government become "lien[s] in favor of the United States," covered by 18 U.S.C. § 3613(c), once they are converted to a court-imposed fine or restitution order. They are, therefore, subject to garnishment under the FDCPA and can be collected without violating the anti-alienation provisions of the Code.

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

1. That Company M's honoring of the above-described Orders of Garnishment pursuant to which Company M was ordered to pay amounts from either Beneficiary A's, Participant B's or Participant C's benefit under either Plan X or Plan W will not result in the failure of either Plan X or Plan W to meet the requirements of Code § 401(a)(13) to the extent that either plan pays some or all of a participant's or beneficiary's benefit to the United States Government when required to do so pursuant to an order of garnishment obtained pursuant to 18 U.S.C. § 3613 and the FDCPA. This conclusion applies regardless of whether the purpose of the garnishment is to collect (a) a fine payable to the United States Government; (b) criminal restitution amounts payable to the United States Government (or any agency or department thereof); (c) criminal restitution amounts payable to the United States Government for the benefit of private parties; or (d) criminal restitution amounts payable to the United States Government for the benefit of a state or local government entity (or any agency or department thereof).

With respect to your second ruling request, a plan's distribution of benefits to satisfy a criminal fine or restitution order pursuant to a garnishment order is for the exclusive benefit of the participant because it satisfies his debt out of plan assets in a manner authorized by 18 U.S.C. § 3613(c) and the FDCPA. (*See* G.C.M. 39,267 (Aug. 2, 1984) (payment of retirement benefits that are in payout status to the bankruptcy trustee will not violate the exclusive benefit rule)).

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

2. That Plan X and Plan W will not violate the exclusive benefit rule of Code § 401(a)(2) when paying some or all of a participant's or beneficiary's benefit to the United States Government when ordered to do so pursuant to an order of garnishment obtained pursuant to 18 U.S.C. § 3613 and the FDCPA. This conclusion applies regardless of whether the purpose of the garnishment is to collect (a) a fine payable to the United States Government; (b) criminal restitution amounts payable to the United States Government (or any agency or department thereof); (c) criminal restitution amounts payable to the United States Government for the benefit of private parties; or (d) criminal restitution amounts payable to the United States Government for the benefit of a state or local government entity (or any agency or department thereof).

With respect to your third ruling request, a levy also reaches a taxpayer's present right to payment at some time in the future. Rev. Rul. 55-210, 1955-1 C.B. 544. A levy is enforceable

against such future benefits when the taxpayer becomes eligible to receive them. "In a levy proceeding, the IRS steps into the taxpayer's shoes" and the "IRS acquires whatever rights the taxpayer himself possesses." United States v. Nat'l Bank of Commerce, 472 U.S. 713, 725 (1985) (internal citations and quotations omitted). This includes the right to elect to receive a plan benefit subject to a lien when the participant has failed to do so. However, "the government can stand in no better position than the taxpayer whose property or right to property is being levied upon." United States v. SterlingNat'l Bank, 494 F.2d 919, 922 (2d Cir. 1974). Thus, the Service can only demand payment when the taxpayer's right to payment ripens.

Because the government is collecting the fine or restitution payment "as if" it were a liability for a tax, pursuant to 18 U.S.C. § 3613(c), the government is subject to the same constraints when enforcing its garnishment order that the Service is subject to when collecting a tax. The government steps into the shoes of the taxpayer so that the lien created under 18 U.S.C. § 3613(c) may attach immediately, although the government cannot collect against the benefit until the participant has a right to a distribution under the terms of the plan. For the same reason, the government can make unexercised distribution elections on behalf of the participant but is subject to the terms of the plan, *e.g.*, pertaining to spousal consent, to the same extent as the participant.

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

3. That a lien created pursuant to 18 U.S.C. § 3613(c) attaches immediately, but the United States Government (i) cannot garnishee or otherwise collect against a plan participant's or beneficiary's benefit until the participant or beneficiary has a right to a distribution (distributable event) under the terms of either Plan X or Plan W; (ii) steps into the shoes of either the participant or beneficiary and can make an election on his or her behalf when such person is eligible for a distribution but has not elected same; and (iii) is subject to the qualified joint and survivor annuity rules and other plan provisions to the sane extent as either the participant or beneficiary.

With respect to your fourth ruling request, where the government is seeking to collect a debt owed to it, the Tax Court has ruled that the additional 10% penalty tax does not apply. Murillo v. Commissioner, T.C. Memo 1998-13, acq., 1999-1 C.B. 332 (seizure of IRA in forfeiture proceeding for violation of money laundering statute). In its Action on Decision in this case, the Service stated that it will not assess the Code § 72(t) additional tax in cases where the government action triggers an early distribution from a qualifed plan. (*See* Murillo vs. Commissioner, T.C. Memo 1998-13 (1999), *action on dec.*, 1999-003 (Jan. 29, 1999)). The collection of criminal fines or restitution payments under 18 U.S.C. § 3613 is such a government action. Consequently, any distributions that result from the collection of such criminal fine or restitution payments are not subject to the additional tax.

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

4. That payments made from either Plan X or Plan W pursuant to the above-referenced orders of garnishment obtained pursuant to 18 U.S.C. § 3613(c) are not subject to the 10-percent additional income tax imposed under Code § 72(t)(1) pursuant to Code § 72(t)(2)(A)(vii)

With respect to your fifth ruling request, in accordance with the law cited above, distributions of pension assets made pursuant to a Service levy are, thus, taxable distributions under Code § 402(a). If such distributions are eligible rollover distributions, they are subject to the mandatory 20-percent withholding. Since, under 18 U.S.C. § 3613(c), the liability of a person fined or ordered to make restitution is treated as a tax liability, distributions from a qualified pension plan pursuant to a garnishment order enforcing collection of a criminal fine or restitution payment are governed by the same rules.

Where the government collects a portion of monthly annuity payments made for life or life expectancy (or joint life or joint life expectancy), or where another exception to eligible rollover distribution treatment is applicable, there is no mandatory withholding because such payments are not eligible rollover distributions. However, where the government collects a lump sum, installment payments, or other payments that fall within the definition of an eligible rollover distribution, mandatory withholding applies.

In two of the cases at issue (Case 1 and Case 2), the government has garnished annuity payments from Company M's defined benefit plan, Plan W. Such distributions are not subject to mandatory 20-percent withholding because they lie outside the definition of "eligible rollover distributions." (*See* Code § 402 (c)(4)(A)). A similar inquiry must be made with respect to the third case when the participant becomes elgible to receive benefits. The types of distributions available and the benefit elected under Plan X will determine whether the 20-percent mandatory withholding requirement applies.

Thus, with respect to yourr fifth ruling request, we conclude as follows:

5. Lump sum payments from either Plan X or Plan W made pursuant to orders of garnishment obtained pursuant to 18 U.S.C. § 3613(c) constitute eligible rollover distributions as defined in Code § 402(c)(4) and, as such, are subject to the written notice requirements of Code § 402(f) and mandatory 20-percent tax withholding required by Code § 3405(c)(1). Payments made pursuant to orders of garnishment obtained pursuant to 18 U.S.C. § 3613(c) in the form of periodic distributions (as that term is defined in Code § 402(c)(4)(A)) are not eligible rollover distributions and are not subject to mandatory withholding.

This letter ruling is based on the facts and representations contained herein.

This letter is directed only to the taxpayer that requested it and is based solely on the representations made with respect thereto. Code § 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter riling is being sent to your authorized representative.

The Service's point of contact with respect to this letter ruling is , Esq. (ID:) who may be reached at (phone) or (FAX).

Sincerely yours,

Frances V. Sloan

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

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose