



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200433025

MAY 17 2004

WIL: 414.00-00

SE: T: EP: RA: T3

Attn: [REDACTED]

LEGEND:

Company A = [REDACTED]

Consultants B = [REDACTED]

Plan X = [REDACTED]

Law Firm Z = [REDACTED]

Dear Ms. [REDACTED]

This is in response to the January 16, 2004, letter submitted on your behalf by your authorized representative, 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 of 1986, as amended (the "Code") and sections 1.414(r)-1(b) and 1.414(r)-4 of the Treasury Regulations.

The following facts and representations support your ruling request.

In Company A ("Employer") began exploring with Consultants B (Consultants), an independent consulting firm of actuaries and consultants and outside Employee Retirement Income Security Act (ERISA) counsel, Law firm Z, (Counsel) the feasibility of establishing two qualified separate lines of business (QSLOBs) under Code section 414(r). Company A considered QSLOBs because Company A is comprised of one line of business that generally provides customers with short-term placement of lower-paid personnel ("QSLOB 1") and a second line of business that provides customers with longer-term placement of highly-skilled professional personnel ("QSLB 2). Employer intended that the establishment of two QSLOBs would allow it to provide competitive retirement benefits to these two different lines of business.

In Consultants conducted a detailed feasibility study regarding whether Employer

could establish two QSLOBs in compliance with Code section 414(r). Consultants completed the study in July and met with Employer and Counsel in August, to discuss the feasibility of adopting the QSLOBs, effective January. Consultants and Counsel agreed that, based on the data and facts available at the time, Employer met the necessary requirements to establish the QSLOBs under Code section 414(r).

Based on this advice, Employer adopted a new qualified profit sharing plan, which contained an arrangement described in section 401(k) of the Code, Plan X, as of January to cover employees of QSLOB 2. On and after this date, eligible employees enrolled in Plan X made 401(k) contributions and received matching contributions, as provided under the terms of Plan X. Plan X's plan year is the calendar year.

In early Consultants conducted QSLOB testing for and issued their report to Employer and Counsel in June. This testing demonstrated that Employer met the QSLOB requirements of Code section 414(r). At that time, Consultants and Counsel discussed the need to file a Form 5310-A, Notice of Qualified Separate Lines of Business, by October so that Employer could elect QSLOB treatment for the plan year. However, although they were subsequently dealing with both the 5300 and 5500 filings for Plan X, due to a lack of effective communication between them, neither Counsel nor Consultant followed up on the filing of the Form 5310-A after June,

On August Counsel submitted Form 5300, Application for Determination for Employee Benefits Plan with respect to Plan X to the Internal Revenue Service. Such filing included Schedule Q, Demo 1 - Qualified Separate Lines of Business, with supporting documentation of the QSLOB structure. Employer received a favorable determination letter for Plan X dated November

On October Employer filed a 2002 Form 5500, Annual Return/Report of Employee Benefit Plan, for Plan X, including Schedule T, Qualified Pension Plan Coverage Information, which indicated that Employer operated a QSLOB that benefited under Plan X.

In late November after the October deadline had passed, Consultant and Counsel realized that the Form 5310-A had not been timely prepared and filed. Employer filed the Form 5310-A relating to Plan X on January

Based on the above, you, through your authorized representative, request the following ruling:

Employer respectfully requests a ruling that under section 301.9100-3 of the 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).

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 the evidence (including affidavits described in section 301.9100-3(e)(2)) of the regulations

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 a detailed affidavit describing the events that led to its failure to give the Service timely notice of its QSLOB election, and of the discovery of its failure. Company A was relying on Consultants and Counsel to prepare all paperwork necessary for it to elect QSLOB treatment, and until November, Company A believed that either Consultants or Counsel had prepared all said paperwork. When Company A discovered that the requisite Form 5310-A had not been timely filed, it immediately filed said Form 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 (i) 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

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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.

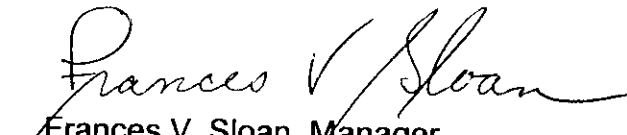
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

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 \_\_\_\_\_, I.D. # \_\_\_\_\_,  
at \_\_\_\_\_ Please address all correspondence to \_\_\_\_\_.

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, Manager  
Employee Plans Technical Group 3

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