200507016

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Uniform Issue List 409.01-08
409.01-09
402.07-00
404.16-00
401.35-00

NOV 2 3 2004

6E:T:EP:RA:T3

Legend:

Company A =

Company B =

Company C =

Bank M =

Plan X =

Plan Y =

Plan Z =

Dear

This is in response to a request for a private letter ruling dated January 22, 2004, as revised by letters dated April 8, 2004, August 4, 2004, and November 4, 2004, submitted on your behalf by your authorized representatives regarding the tax consequences of the spin-off of a subsidiary by the parent corporation sponsoring Plan Z. Your authorized representatives have submitted the following facts and representations in connection with this request.

Company A is the parent corporation of its wholly-owned subsidiary Company B, and Company C is a wholly-owned subsidiary of Company B. Company A's operations consist of two separate and

fundamentally different businesses. Company A has determined that the best way to maximize the long-term value of each business is to separate the businesses through a tax-free spin-off. Accordingly, Company A intends to consummate an underwritten initial public offering ("IPO") of up to 20 percent of the total common stock of Company C and then distribute to Company A shareholders the remaining common stock of Company C in proportion to each shareholder's relative ownership of Company A stock (the "Spin-off"). It is anticipated that the Spin-off will occur about three months following the IPO and will take the form of a tax-free stock dividend to Company A's shareholders. The Spin-off is intended to qualify under section 355 of the Internal Revenue Code ("Code") and will be conditioned upon the opinion of counsel to that effect. Following the Spin-off, Company A and Company C will no longer be part of the same controlled group of corporations within the meaning of section 414(b), (c), (m) or (o) or section 409(l) of the Code.

Company A maintains Plan Z for the benefit of its employees. Company C does not participate in Plan Z. Plan Z is a defined contribution plan intended to qualify under Code section 401(a) and to be an employee stock ownership plan ("ESOP") as described in Code section 4975(e)(7). Plan Z includes a cash or deferred arrangement as described in Code section 401(k). Plan Z was established effective [redacted] as a result of the merger of Plan X and Plan Y, which were also sponsored by Company A. Plan X was a profit-sharing plan. Plan Y, an ESOP, was established in [redacted] and from [redacted] to [redacted], was a tax credit ESOP ("TRASOP"). In 1983, Plan Y was converted from a TRASOP to a payroll-based TRASOP ("PAYSOP"). Company A also maintains two other pension plans ("Pension Plans").

Your authorized representative has represented that the shares of Company A common stock acquired by Plan Y while it was a TRASOP and the shares of Company A common stock acquired by Plan Y while it was a PAYSOP are segregated and held in accounts separate from the remainder of the Plan Z assets. However, the TRASOP shares are not held in accounts separate from the PAYSOP shares. Plan Y remained a PAYSOP until [redacted] when it entered into an exempt loan. During these years as a PAYSOP, the only allocations of Company A common stock in Plan Y were attributable to the PAYSOP feature. Plan Y took out a second exempt loan in [redacted] (referred to collectively as the "Exempt Loans"). The [redacted] loan was refinanced in [redacted] but the term of the loan, which matures on [redacted], was not extended. The only provision of the loan that changed was the interest rate. Plan Z assumed this loan. Under the terms of Plan Z, all Company A shares acquired with the proceeds of the Exempt Loans are held in the Plan Z suspense account until they are released and allocated to participants' accounts in accordance with the terms of Plan Z. Dividends received on Company A shares held in the Plan Z suspense account (and on certain Company A shares acquired with the proceeds of the Exempt Loans and allocated to participants' accounts) must be used to pay principal and interest on the Exempt Loans.

Pursuant to the Spin-off described above, Plan Z will hold a proportionate share of Company C stock based on its relative ownership of Company A stock. Based upon the advice of Bank M, its investment banker, Company A estimates that immediately following the Spin-off the shares of Company A stock held by Plan Z will be approximately 25 percent of the aggregate market value of all of the assets held by Plan Z. Specifically, Plan Z will hold approximately [redacted] shares of Company C stock in its suspense account. The trustee of Plan Z intends to sell the Company C shares held in Plan Z's suspense account and also held in participants' PAYSOP/TRASOP

accounts and use the proceeds to purchase Company A shares. Bank M has estimated that approximately [redacted] shares of Company A stock will be acquired with the proceeds from the Company C shares held in Plan Z's suspense account.

Company A also anticipates that some Plan Z participants will sell some of the Company C shares in their accounts (other than in their PAYSOP/TRASOP accounts, which will be sold by the trustee of Plan Z as described above), and that the Pension Plans, which are expected to hold nearly one million shares of Company C stock after the Spin-off, will sell some or all of these shares.

Company A believes that it will be necessary to use the open market for these purchases and sales. Bank M prepared a detailed analysis of the daily trading volume of companies with market capitalizations comparable to that of Company C in order to estimate Company C's daily trading volume. Bank M has estimated that Plan Z could sell no more than 20% of its daily trading volume without causing a disruption in the market for Company C shares. Based on the number of Company C shares held in Plan Z's suspense account, Bank M estimates that it would take 20 to 40 trading days to complete the sale of these shares. This analysis does not include sales by the Pension Plans.

Bank M applied the same analytical method to determine the number of shares of Company A stock that could be purchased without disrupting the market. Based on its analysis, Bank M has estimated that it would take 201 to 402 trading days to complete the purchase.

Bank M has advised Company A that completing the sale of Company C stock and reinvesting the proceeds in Company A stock within 90 days could result in potential downward pressure in the market price of Company C shares and significant upward pressure in the market price of Company A shares. These results would cause a significant loss of value to Plan Z and its participants. Accordingly, Bank M recommends that Company A allow 612 calendar days (422 trading days) to complete the sales and purchases described above. This number allows for a certain amount of overlap between the sale of Company C shares and the purchase of Company A shares.

Based on the foregoing facts and representations, your authorized representatives have requested the following rulings:

1. The Company C shares received by Plan Z as a result of the Spin-off will not constitute "employer securities" for purposes of Code sections 409(l) and 4975(e)(8).

2. That if the 90-day reinvestment period of section 1.46-8(e)(10) of the Income Tax Regulations ("regulations") applies to Plan Z, the Commissioner of the Service shall extend said reinvestment period pursuant to his authority under section 1.46-8(e)(10) so that the sale of the Company C shares by Plan Z following the Spin-off, and the reinvestment of the proceeds of such sale in Company A shares, may take place over a period commencing on the date of the Spin-off and ending on the date that is 612 calendar days following such date (the "Reinvestment Period"), without resulting in the failure of Plan Z to satisfy the requirement of Code section 4975(e)(7) that Plan Z be designed to invest primarily in employer securities.

3. The shares of Company C acquired by Plan Z as a result of the Spin-off will be treated as "securities of the employer corporation" for purposes of excluding net unrealized appreciation from income under section 402(e) of the Code.

4. For purposes of determining net unrealized appreciation under section 402(e) of the Code, the basis of the Company A and Company C shares held by Plan Z will be determined by allocating the basis in the Company A shares immediately before the Spin-off between the Company A shares and Company C shares immediately after the Spin-off in accordance with the rules under section 358 of the Code, to the extent that the Spin-off is tax-free under section 355 of the Code.

5. To the extent that Plan Z disposes of the shares of Company C and reinvests the proceeds in shares of Company A within the Reinvestment Period, the basis of the replacement shares of Company A for purposes of determining net unrealized appreciation under section 402(e) of the Code will be equal to the basis of the shares of Company C determined in the manner described in ruling request 4 above.

6. Following the Spin-off, distributions during the Reinvestment Period to Plan Z participants of Company C shares allocated to their accounts will constitute distributions of employer securities in satisfaction of the requirement under section 409(h)(1)(A) of the Code.

7. During the Reinvestment Period, the number of shares of Company C held in the suspense account, as well as any cash representing the proceeds upon the sale of any such Company C shares held in the suspense account ("Suspense Cash Proceeds"), will be taken into consideration when calculating the number of shares to be released from suspense under section 4975 of the Code, and may then be converted to an equivalent number of shares of Company A for release from suspense based on the fair market value of the shares of Company C and shares of Company A and the amount of Suspense Cash Proceeds at the time of such release.

8. To the extent that Plan Z disposes of the shares of Company C received pursuant to the Spin-off and reinvests the proceeds in shares of Company A, dividends paid on such shares of Company A which are used to repay the Exempt Loans will be treated as "applicable dividends" under Code section 404(k)(2)(A)(iv) and will be deductible by Company A under section 404(k) to the same extent that dividends paid with respect to the original Company A shares purchased with proceeds of the Exempt Loans were deductible by Company A.

9. To the extent that Plan Z receives Company C shares with respect to its currently held Company A shares which were acquired on or before [redacted], the Company A stock acquired with the proceeds from any disposition of such Company C shares will be deemed to have been acquired prior to [redacted] so that these Company A shares will not be subject to the diversification rules contained in section 401(a)(28) of the Code, if the acquisition of these Company A shares is accomplished within 90 days after the Spin-off, or within an extended period approved by the Service.

With respect to ruling request 1, section 4975(e)(8) of the Code states that the term "qualifying employer security" means any employer security within the meaning of section 409(l).

Section 409(l) of the Code provides, in pertinent part, that the term "employer securities" means common stock issued by the employer (or by a corporation that is a member of the same controlled group) which is readily tradeable on an established securities market.

In the present case, your authorized representative has represented that, following the Spin-off, Company C will no longer be a member of the same controlled group as Company A for purposes of Code section 409(l). Therefore, after the Spin-off, the Company C shares will not constitute "employer securities" with respect to Plan Z (which is maintained by Company A) for purposes of sections 409(l) and 4975(e)(8) of the Code.

Accordingly, with respect to ruling request 1, we conclude that the Company C shares received by Plan Z as a result of the Spin-off will not constitute "employer securities" for purposes of Code sections 409(l) and 4975(e)(8).

With respect to ruling request 2, section 409(a)(2) of the Code provides that a tax credit employee stock ownership plan is a defined contribution plan which is designed to invest primarily in employer securities as defined in section 409(l). Section 1.46-8(e)(10) of the regulations provides that the requirement that a tax credit employee stock ownership plan be designed to invest primarily in employer securities is a continuing obligation. Therefore, a transaction changing the status of a corporation as an employer may require the conversion of certain plan assets into other securities.

Section 1.46-8(e)(10) of the regulations also provides that cash or other assets derived from the disposition of employer securities held by a tax credit employee stock ownership plan must be reinvested in employer securities not later than the 90th day following the date of disposition. However, the Commissioner may grant an extension of the period for reinvestment in employer securities depending on the facts and circumstances of each case.

Under the facts and circumstances described above, it is appropriate to apply section 1.46-8(e)(10) of the regulations to Plan Z. Your authorized representatives have submitted a detailed mathematical analysis prepared by Bank M which establishes expected daily trading volumes for Company A and Company C by comparing certain financial data with that of a number of other companies with similar market capitalizations. Based on this analysis and the number of shares to be bought and sold, Bank M has recommended that 612 calendar days (422 trading days) be allowed for the sale of Company C stock and reinvestment into Company A stock to avoid disrupting the market. Bank M has advised Company A that completing the reinvestment within 90 days from the date of the Spin-off would deflate the market price of Company C stock and inflate the market price of Company A stock, resulting in a significant loss of value to Plan Z and its participants. Since prudent management of the reinvestment will require a period of time longer than the 90 days provided in section 1.46-8(e)(10) of the regulations, an extension of the 90-day period is reasonable under the facts and circumstances described above.

Taking into consideration all of the facts and circumstances of this case, we conclude with respect to ruling request 2 that the sale of Company C shares by Plan Z following the Spin-off, and the reinvestment of the proceeds of such sale in Company A shares, may take place over a period

commencing on the date of the Spin-off and ending on the date that is 612 calendar days (422 trading days) following such date (the "Reinvestment Period"), without resulting in the failure of Plan Z to satisfy the requirement of Code section 4975(e)(7) that Plan Z be designed to invest primarily in employer securities.

With respect to ruling requests 3 through 5, section 402(e)(4)(B) of the Code provides, that in the case of a lump sum distribution which includes securities of the employer corporation, unless a taxpayer elects otherwise, there shall not be included in gross income the net unrealized appreciation attributable to that part of the distribution which consists of securities of the employer corporation.

Section 402(e)(4)(E) of the Code provides generally that the term "securities of the employer corporation" includes securities of a parent or subsidiary corporation (as defined in subsections (e) and (f) of section 424) of the employer corporation.

Section 1.402(a)-1(b)(2)(i) of the regulations provides that the amount of net unrealized appreciation in securities of the employer corporation which are distributed by the trust is the excess of the market value of such securities at the time of distribution over the cost or other basis of such securities to the trust. Section 1.402(a)-1(b)(2)(ii) of the regulations sets forth the manner in which the cost or other basis to the trust of a distributed security of the employer corporation is calculated for the purpose of determining the net unrealized appreciation on such security. Section 1.402(a)-1(b)(2)(ii)(a) provides that if a security was earmarked for the account of a particular employee at the time it was purchased by or contributed to the trust so that the cost or other basis of such security to the trust is reflected in the account of such employee, such cost or other basis shall be used.

In Revenue Ruling 73-29, 1973-1 C.B. 198, securities of an employer corporation held by its qualified plan were transferred to the qualified trust of an unrelated corporation when the first employer sold part of its business and transferred some of its employees to an unrelated corporation. It was held that shares of stock of the seller corporation distributed from the buyer's qualified trust to employees of the buyer corporation who are former employees of the seller corporation are securities of the employer corporation and will always be securities of the employer corporation even after those shares and the employees in whose accounts they were held were transferred to an unrelated corporation.

In the present case, Company C is a wholly-owned subsidiary of Company B, which is a wholly-owned subsidiary of Company A prior to the Spin-off. Therefore, prior to the Spin-off, Company C stock constitutes securities of the employer corporation within the meaning of section 402(e)(4)(E) of the Code. Pursuant to and simultaneously with the Spin-off, Company C will cease to be a subsidiary of Company B. In addition, the Company C stock distributed to the Plans pursuant to the Spin-off will represent part of the pre-Spin-off value of the Company A stock.

Accordingly, with respect to ruling request 3, we conclude that the shares of Company C acquired by Plan Z as a result of the Spin-off will be treated as "securities of the employer corporation" for purposes of excluding net unrealized appreciation from income under section 402(e) of the Code.

With respect to ruling request 4, the Spin-off is conditioned upon receipt by Company A of an opinion of counsel to the effect that the Spin-off will be tax-free under section 355 of the Code. Section 1.358-2(a)(2) of the Treasury Regulations provides that if, as a result of a transaction under section 355, a shareholder who owned stock of only one class before the transaction owns stock of two or more classes after the transaction, then the basis of all the stock held before the transaction is allocated among the stock of all classes held immediately after the transaction in proportion to the fair market values of the stock of each class.

Accordingly, we conclude with respect to ruling request 4 that for purposes of determining net unrealized appreciation under section 402(e) of the Code, the basis of the Company A and Company C shares held by Plan Z will be determined by allocating the basis in the Company A shares immediately before the Spin-off between the Company A shares and Company C shares immediately after the Spin-off in accordance with the rules under section 358 of the Code, to the extent that the Spin-off is tax-free under section 355 of the Code.

With respect to ruling request 5, section 402(j) of the Code provides, in pertinent part, that for purposes of section 402(e)(4), in the case of any transaction in which either (A) the plan trustee exchanges the plan's securities of the employer corporation for other such securities, or (B) the plan trustee disposes of securities of the employer corporation and uses the proceeds of such disposition to acquire securities of the employer corporation within 90 days (or such longer period as the Secretary may prescribe), the determination of net unrealized appreciation shall be made without regard to such transaction.

In the present case, we have already indicated that Company C shares received by Plan Z as a result of the Spin-off are securities of the employer corporation as defined in section 402(e)(4)(E) of the Code for purposes of section 402. The disposition by Plan Z of Company C shares followed by the reinvestment of the proceeds in Company A stock is thus a disposition of securities of the employer corporation followed by a reinvestment of the proceeds in securities of the employer corporation. In accordance with section 402(j), if such reinvestment occurs within 90 days (or such longer period as the Secretary may prescribe), the transaction is ignored for purposes of determining net unrealized appreciation with respect to those securities.

We previously concluded with respect to ruling request 2 that the 90-day reinvestment period of section 1.46-8(e)(10) of the regulations is extended to a total of 612 calendar days. For the same reasons set forth in our response to that ruling request, we conclude that the 90-day reinvestment period described in section 402(j) is also extended to a total of 612 calendar days from the date of the Spin-off ("Reinvestment Period").

Accordingly, we conclude with respect to ruling request 5 that, to the extent that Plan Z disposes of the shares of Company C and reinvests the proceeds in shares of Company A within the Reinvestment Period, the basis of the replacement shares of Company A for purposes of determining net unrealized appreciation under section 402(e) of the Code will be equal to the basis of the shares of Company C determined in the manner described in ruling request 4 above.

With respect to ruling request 6, section 409(h)(1) of the Code provides that a participant in a TRASOP or ESOP must have a right to demand that his benefit be distributed in the

form of employer securities (as defined in section 409(l)). As discussed above, to the extent the Spin-off resulted in Plan Z holding non-employer securities, reinvestment in Company A Shares is required within 90 days following the date of receipt or such longer period of time allowed by the Commissioner based on the facts and circumstances. We ruled above in ruling request 2 that this reinvestment may take place within the Reinvestment Period. However, when a participant becomes entitled to a distribution under Plan Z during the Reinvestment Period, the distribution of any non-employer securities (derived from ownership of employer securities) held in a participant's account during this period is considered a distribution of employer securities that satisfies the requirements of section 409(h).

Accordingly, we conclude with respect to ruling request 6 that, following the Spin-off, distributions during the Reinvestment Period to Plan Z participants of Company C shares allocated to their accounts will constitute distributions of employer securities in satisfaction of the requirement under section 409(h)(1)(A) of the Code.

With respect to ruling request 7, section 54.4975-7(b)(8) of the regulations provides generally that an exempt loan for an ESOP must provide for the release from encumbrance of plan assets used as collateral for the loan. It further provides that for each plan year during the duration of the loan, the number of securities released must equal the number of encumbered securities held immediately before release for the current plan year multiplied by a fraction, the numerator of which is the amount of principal and interest paid for the year and the denominator of which is the sum of the numerator plus the principal and interest to be paid for all future years. Finally, section 54.4975-7(b)(8) provides that if collateral for the loan includes more than one class of securities, the number of securities of each class to be released for a plan year must be determined by applying the same fraction to each class.

Section 54.4975-11(c) of the regulations provides that all assets acquired with the proceeds of an exempt loan under section 4975(d)(3) of the Code must be held in the suspense account and withdrawn as if encumbered.

In the present case, the Company C stock received by Plan Z in the Spin-off is received as a result of Plan Z's ownership of Company A stock which was acquired with the proceeds of the exempt loan. Similarly, the Suspense Cash Proceeds received by Plan Z are received as a result of Plan Z's ownership of Company A stock which was acquired with the proceeds of the exempt loan. For purposes of section 54.4975-11(c) of the regulations, the Company C stock is treated as if it was also acquired with the proceeds of the exempt loan. In addition, under these particular facts and circumstances, it is appropriate to also treat the Suspense Cash Proceeds as so acquired for purposes of the application of section 54.4975-7(b)(8) of the regulations during the Reinvestment Period. Accordingly, the Company C stock and the Suspense Cash Proceeds are taken into account in determining the number of shares to be released, in accordance with section 54.4975-7(b)(8) of the regulations by applying the fraction to them separately. However, in place of the release of Company C stock and Suspense Cash Proceeds from the suspense account, an equivalent amount of Company A stock should be released, based on the fair market values of both Company A stock and Company C stock and the number of shares of Company A stock that could be purchased on the last day of the year with the Suspense Cash Proceeds held at such date.

Accordingly, we conclude with respect to ruling request 7 that, during the Reinvestment Period, the number of shares of Company C held in the suspense account (as well as the Suspense Cash Proceeds) will be taken into consideration when calculating the number of shares to be released from suspense under section 4975 of the Code, and may then be converted to an equivalent number of shares of Company A for release from suspense based on the fair market value of the shares of Company C and shares of Company A and the amount of Suspense Cash Proceeds at the time of such release.

With respect to ruling request 8, section 404(k) of the Code generally permits a corporation to deduct the amount of any applicable dividend paid in cash by the corporation during the taxable year with respect to employer securities which are held on the record date for such dividend by an ESOP which is maintained by the corporation paying the dividend or any other member of the same controlled group. Section 404(k)(2)(A)(iv) defines the term "applicable dividend" to include any dividend which, in accordance with plan provisions, is used to make payments on an exempt loan the proceeds of which were used to acquire the employer securities (whether or not allocated to participants) with respect to which the dividend is paid. Section 404(k)(2)(B) provides that a dividend described in section 404(k)(2)(A)(iv), paid with respect to employer securities allocated to a participant, is an applicable dividend only if the plan provides that employer securities with a fair market value of at least the amount of the dividend are allocated to the participant.

Section 404(k)(6)(A) provides that the term employer securities has the same meaning given such term by section 409(l). Under section 409(l), the term "employer securities" generally means common stock issued by the employer (or by a corporation which is a member of the same controlled group) which is readily tradeable on an established securities market.

In this case, the Company C shares were acquired by Plan Z pursuant to the Spin-off as the direct result of Plan Z's ownership of the original Company A stock which was acquired with the proceeds of the exempt loan. The Company C shares held by Plan Z after the Spin-off will represent part of the value of the original Company A shares held prior to the Spin-off and acquired with the proceeds of the exempt loan. Since the Company C shares represent part of the assets acquired with the proceeds of the exempt loan, if Plan Z disposes of the Company C shares and reinvest the proceeds in Company A shares within a reasonable period of time, we believe that the replacement Company A shares should be treated as assets acquired with the proceeds of the exempt loan.

Accordingly, we conclude with respect to ruling request 8 that, to the extent that Plan Z disposes of the shares of Company C received pursuant to the Spin-off and reinvests the proceeds in shares of Company A, dividends paid on such shares of Company A which are used to repay the Exempt Loans will be treated as "applicable dividends" under Code section 404(k)(2)(A)(iv) and will be deductible by Company A under section 404(k) to the same extent that dividends paid with respect to the original Company A shares purchased with proceeds of the Exempt Loans were deductible by Company A.

With respect to ruling request 9, section 401(a)(28) of the Code provides generally that any employee who has attained age 55 and has completed ten years of participation in an ESOP is entitled annually during a six-year period to direct diversification of at least 25 percent of the

participant's account balance in the ESOP (50 percent in the sixth year). The diversification requirement is effective with respect to shares acquired by the ESOP after December 31, 1986.

Pursuant to Q & A 3 of Notice 88-56, 1988-1 C.B. 540 ("Notice 88-56"), employer securities acquired by an ESOP or tax credit ESOP after [redacted] will be deemed to have been acquired by or contributed to the ESOP on or before [redacted] for purposes of section 401(a)(28) of the Code, in certain circumstances. One of these circumstances is when cash or other assets derived from the disposition of employer securities pursuant to a corporate reorganization or acquisition attempt (whether or not successful) which are used to purchase other employer securities will be treated as acquired by or contributed to the ESOP on or before December 31, 1986, if the period between the disposition and the reinvestment does not exceed 90 days or such longer period as may be granted by the Commissioner under rules similar to those of section 1.46-8(e)(10) of the regulations.

In the present case, the Spin-off constitutes a corporate reorganization in which cash or other assets are derived from the disposition of certain employer securities which were acquired on or before [redacted] In accordance with Notice 88-56, if the assets invested in Company C stock are reinvested in Company A stock within 90 days of the Spin-off, or such longer period as may be granted by the Commissioner, the Company A stock so acquired will be treated as acquired by Plan Z on or before December 31, 1986, and consequently will not be subject to the diversification requirements of section 401(a)(28) of the Code.

We previously concluded with respect to ruling request 2 that the 90-day reinvestment period of section 1.46-8(e)(10) of the regulations is extended to a total of 612 calendar days. For the same reasons set forth in our response to that ruling request, we conclude that the 90-day reinvestment period described in Notice 88-56 is also extended to a total of 612 calendar days from the date of the Spin-off ("Reinvestment Period").

Accordingly, we conclude with respect to ruling request 9 that to the extent that Plan Z receives Company C shares with respect to its currently held Company A shares which were acquired on or before December 31, 1986, the Company A stock acquired with the proceeds from any disposition of such Company C shares will be deemed to have been acquired prior to January 1, 1987, so that these Company A shares will not be subject to the diversification rules contained in section 401(a)(28) of the Code, if the acquisition of these Company A shares is accomplished within the Reinvestment Period.

This ruling letter is based on the assumption that Plan Z is qualified under section 401(a) of the Code and meets the requirements of section 4975(e)(7), and that its related trust is tax exempt under section 501(a) at all relevant times.

This ruling letter is also based on the assumption that the TRASOP and PAYSOP shares have been maintained in a manner consistent with the applicable provisions of the Code and regulations.

This ruling letter is directed solely 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.

A copy of this ruling letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions about this letter, please contact
Please refer to SE:T:EP:RA:T:3.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy
Form 437

cc:

200507017

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NOV 24 2004

Uniform Issue List: 408.03-00

SE:T:EP:RA:T1

Legend:

Taxpayer =

Company E =

Company F =

IRA Annuity G =

Amount H =

Amount I =

Dear :

This letter is in response to a request for a letter ruling dated May 7, 2004, as supplemented by additional correspondence dated June 7, 2004, June 17, 2004, August 31, 2004, and November 1, 2004, from your authorized representative, in which you have applied for a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

The Taxpayer is 72 years old. Taxpayer's spouse of [redacted] years passed away in [redacted]. Taxpayer's spouse was an attorney and handled all of the couple's business affairs. After the death of Taxpayer's spouse, Taxpayer's son served as her financial advisor and stockbroker. Taxpayer's son is a registered representative and was previously employed by Company E.

Taxpayer's spouse, unbeknownst to Taxpayer, had used the proceeds from an individual retirement account described in Code section 408(a) to purchase IRA Annuity G, an individual retirement annuity under section 408(b), issued by Company F. Taxpayer's son, who was a broker with Company E at that time, facilitated the purchase of IRA Annuity G by Taxpayer's spouse. Taxpayer was named the beneficiary of IRA Annuity G.

The Taxpayer's mother passed away in February, 2004. She resided at the Taxpayer's home until August, 2003 when she entered a respite center, suffering from Alzheimer's disease. For a number of years until their recent deaths, Taxpayer had provided nursing care to her husband and mother. As a result, Taxpayer was physically and mentally exhausted.

Shortly after her husband's death, Taxpayer was contacted by her son and advised that there was an annuity (IRA Annuity G) with a death benefit option. Taxpayer was not advised that the annuity was an IRA annuity. The Taxpayer was told to cash in the qualified annuity due to the guaranty feature, which provided that she would receive the greater of the fair market value on the date of the surrender, or the actual investment. The amount actually invested in the annuity was higher than the fair market value at the date the annuity was surrendered.

The Taxpayer, due to her lack of understanding of the tax consequences of this transaction, relied upon her son who was a registered representative. Taxpayer's son assured Taxpayer that Company E would handle the processing of the claim. Relying on her son's advice, on October 8, 2003, Taxpayer signed a form, provided by Company E, for the purpose of claiming the death benefit. Taxpayer's son was not present at the time the form was completed and Taxpayer was not given any explanation regarding the form by the representative of Company E. Due to the Taxpayer's lack of financial experience and knowledge, Taxpayer did not review the form before signing it.

The proceeds from IRA Annuity G, in Amount H, less the withholding of federal income taxes (Amount I), were deposited in an interest bearing, non-IRA account with Company F on October 13, 2003. Taxpayer met with her accountant on February 19, 2004, to

begin preparing her tax return for the 2003 calendar year, and was advised that Amount H was from an IRA annuity and could have been rolled over. The proceeds, as described above, still remain in the non-IRA account with Company F. None of the proceeds have been used by the Taxpayer.

Taxpayer has not violated the requirements of Code section 408(d)(3)(B). The Taxpayer has not received any other amount from an individual retirement account or individual retirement annuity, during the one year previous, which was not includible in her gross income because of section 408(d)(3).

Based on the above facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution, in Amount H, from IRA Annuity G maintained with Company F because the failure to waive such requirement would be against equity or good conscience.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code. Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(I) from an IRA which was not includible in gross income because of the application of section 408(d)(3). Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day

requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented by you demonstrates that the rollover of funds (Amount H) from IRA Annuity G to another IRA was not made within 60 days. Due to your lack of experience in financial matters, you relied upon the advice of your son who serves as your financial advisor. You were advised by your son, a registered representative, to cash in IRA Annuity G; however, neither your son nor a representative of Company E informed you that IRA Annuity G was an IRA annuity that could be rolled over. Under these circumstances, you could not reasonably satisfy the requirement that the funds be deposited in an IRA within 60 days of the distribution from Company F.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of funds (Amount H) from IRA Annuity G with Company F. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount H to an IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, this amount (Amount H) will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

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.

A copy of this letter ruling has been sent to your authorized representatives pursuant to a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact , SE:T:EP:RA:T1, I.D. #[redacted], at [redacted].

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:
Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437

cc: