200718036

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

FEB 05 2007

T:EP:RA:GK

U.I.L. 414.18-00
U.I.L. 9100.00-00

Attention:

Legend:

Company A =

State K =

Company B =

State W =

Company C =

Company D =

Company E =

Company F =

Company G =

Company H =

Company J =

Plan U =

Plan V =

Plan W =

Plan X =

Plan Y =

Company L =

Plan Z =

Individual N =

Company P =

State R =

Dear :

This is in response to your letter dated June 14, 2005, as supplemented by correspondence dated May 11, 2006, June 13, 2006, July 10, 2006, and January 22, 2007, submitted on your behalf by your authorized representative in which you request an extension of time pursuant to section 301.9100-1 of the Procedural and Administrative Regulations (the "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 and sections 1.414(r)-1(b) and 1.414(r)-4 of the Income Tax Regulations (the "regulations").

The following facts and representations have been submitted on your behalf:

Company A is incorporated in State K. The predecessor entity to Company A was Company B, which was incorporated in State W. From time to time, Corporation A (or its predecessor, Company B), acquired various other entities and from time to time sold some of its entities. Specifically, the separate lines of business consist of the following: (1) transportation (Company A and Company B); (2) wood products (Company D, Company E, and Company F); stair rail manufacturing (Company C); elevators (Company H); and staircase installation (Company J). It is represented that the nature and characteristics of the workforces among each line of business vary due to criteria such as differences in the nature of the businesses and differences in geographical locations. Company G and Company L are business entities that were related to Company

A but were both dissolved in Further, Company H and Company J were recent acquisitions.

The above entities have sponsored or participated in a variety of defined contribution plans that you represent are intended to be tax-qualified under section 401(a) of the Code. The plans are as follows: Company E and Company F are the participating employers in Plan U, which was initially sponsored by Company D and later by Company F; Company B and Company A are the participating employers in Plan V, which was initially sponsored by Company B, and later Company A; Company B and Company A are the participating employers in Plan W, which was initially sponsored by Company B and later Company A; Plan X is single employer plan sponsored by Company C; Company L is the participating employer in Plan Y, which is sponsored by Company H; Plan Z is a single employer plan sponsored by Company J. It is represented that each of the above plans are structured in accordance with their separate lines of business. It is further represented that each of the retirement plans have always maintained their respective tax qualified statuses under Code section 401(a) and their related trusts tax-exempt under section 501(a).

On December 31, 1991, final regulations were published under Code section 414(r). In , Company A retained Individual N of Company P, an employee benefits consulting company, to determine the application of Code section 414(r) and the regulations thereunder to Company A's retirement plans. Company A represents that Individual N prepared an analysis of the separate lines of business of Company A for the 1991 and 1992 plan years. At the same time, Company A acquired a new entity, Company C. Therefore, Individual N prepared a prospective analysis of the 1993 plan year, inclusive of Company C. Company A operated its retirement plans in accordance with the analysis and report prepared by Individual N.

On September 7, 1993, proposed amendments to the final regulations under Code section 414(r) were published. On September 28, 1993, the Service issued Revenue Procedure 93-40 with an effective date of October 12, 1993. Revenue Procedure 93-40 provides the rules under which an employer notifies the Service of its operation of QSLOBs under Code section 414(r). Revenue Procedure 93-40 requires the employer to file a Form 5310-A. Revenue Procedure 93-40 also provided that notice was not required for plan years beginning before January 1, 1994.

In , Individual N prepared on behalf of Company A and for each of the plans Forms 5307, "Application for Determination for Adopters of Master or Prototype, Regional Prototype or Volume Submitter Plans". This filing was to request favorable determination letters for Company A's retirement plans. Company A represents that the filings disclosed that it was applying separate lines of business. However, rather than filing a Form 5310-A as required by Revenue Procedure 93-40, Individual N gave notice to the Service of Company

A's separate lines of business by attaching a copy of his prior report along with three additional pages of information explaining the submission and requesting approval under section 1.414(r)-6 of the regulations.

It is represented that the predecessor to Company A (Company B) hired Company P to prepare the QSLOB filings for 1991. It is also represented that Company B had a long-standing relationship with Company P as it was the third party administrator for its retirement plans as well as the third party administrator for other retirement plans sponsored by companies in State W and State R. It its capacity as third party administrator Company P prepared quarterly statements for the plan participants, prepared and filed Forms 5500, and provided any other administrative services required with respect to the plans. Further, it is represented that Company A relied on Company P's expertise in employee benefit matters and assumed that it was fully capable of preparing the QSLOB filings on its behalf.

Specifically, the information filed with the Forms 5307 asked the Service to approve separate lines of business ("SLOB") under section 1.414(r)-6 of the regulations. The information addressed the factors on which such a determination could be made, such as the degree to which property or services provided by the lines of business is different from all other lines; the degree to which the SLOB is organized and operated separately; the nature of the competition faced by each SLOB, the historical factors such as whether the SLOB was acquired from another employer, the degree to which the SLOB fails the various safe harbors, and the size of the SLOB relative to the remainder.

Favorable determination letters were issued with respect to Plan U dated June 27, 1994; Plan V received a favorable determination letter dated April 11, 1995; Plan W received a favorable determination letter dated April 11, 1995; and Plan X, which was adopted by Company C on , received a favorable determination letter dated . (Company C, which is the sponsor of Plan X, was acquired by Company A on and the acquisition of this company was addressed for the 1993 plan year QSLOB determination). Company A represents that because it received favorable determination letters with respect to its retirement plans, proper notice was given to the Service and, therefore, operated its plans under the separate lines of business rules. Further, Company P, the company retained by Company A to prepare the analysis of the separate lines of business for Company A, stated in a letter to Company A dated , that Company A's plans were filed under the separate lines of business rules and that item 10a on Form 5307 was checked "yes" to indicate that the SLOB rules were being applied to Company A.

In 2004, Company A retained a new accounting firm which realized that Company A was applying the separate lines of business rules and requested a copy of Company A's Forms 5310-A. Company A was unable to locate the Forms 5310-A that should have been filed for plan years 1994 through 2002.

Upon discovering that Forms 5310-A had not been filed, Company A immediately filed Form 5310-A for the 2003 plan year and forward so that notice was properly given for those years. This request for relief was filed with the Service for the plan years 1994 through 2002, and prior to the Service discovering that Form 5310-A had not been filed to provide notice to the Service that Company A was operating separate lines of business.

Based on the foregoing facts and representations, Company A requests an extension of time under section 301.9100-1 of the Regulations to file the notice of election described in Section 3 of Revenue Procedure 93-40 to be treated as operating QSLOBS under section 414(r) of the Code and sections 1.414(r)-1(b) and 1.414(r)-4 of the regulations.

Code section 414(r) provides rules for determining whether an employer operates qualified separate lines of business for purposes of applying Code section 129(d)(8) and section 410(b). If an employer is treated as operating separate lines of business during any year, the employer 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) and 410(b).

Section 1.414(r)-1 of the regulations provides that an employer will be treated as operating qualified separate lines of business only if: (1) the employer designates its lines of business by reference to the property of services provided by each line; (2) each line of business is organized and operated separately from the remainder of the employer and is therefore a separate line of business; and (3) each of these separate lines of business meet additional statutory requirements of section 414(r)(2) of the Code (including administrative scrutiny) and thus constitutes a qualified separate line of business.

Section 1.414(r)-4 of the regulations describes the fifty employee and notice requirements. Section 1.414(r)-4(c) provides, in general, that a separate line of business satisfies the notice requirements for a testing year only if the employer notifies the Secretary that it treats itself as operating qualified separate lines of business for the testing year in accordance with section 1.414(r)-1(b) of the regulations. The employer's notice for the testing year must specify each of the qualified separate lines of business operated by the employer and the section or sections of the Code to be applied on a qualified-separate-line-of-business basis. The employer's notice must take the form, must be filed at the time and the place, and must contain any additional information prescribed by the Commissioner in revenue procedures, notices, or other guidance of general applicability. No other notice, whether actual or constructive satisfies the requirements of this section.

Revenue Procedure 93-40 sets forth the procedures for satisfying the requirement under section 414(r)(2)(B) of the Code that an employer notify the Secretary that the employer treats itself as operating qualified separate lines of business.

Section 3 of Revenue Procedure 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 Revenue Procedure 93-40 provides that notice must be given by filing Form 5310-A and that until the revised Form 5310-A is available, employers should print "QSLOB NOTICE" in bold letters on the top of the Form 5310-A and submit as attachment with the form that contains the information described in section 3.04 of Revenue Procedure 93-40.

Section 3.04 of Revenue Procedure 93-40 provides that the schedule attached to each Form 5310-A must provide the following information: (1) the identification of each qualified separate line of business operated by the employer, (2) the identification of each plan maintained by the employer, (3) the qualified separate lines of business that have employees benefiting under each such plan, and (4) the section or sections of the Code for which the employer is testing on a qualified separate line of business basis (i.e., section 410(b) or section 401(a)(26)).

Section 3.05 of Revenue Procedure 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 on the employer that begins earliest in the testing year. Section 3.06 of Revenue Procedure 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 taken timely action to provide a new notice.

Under section 301.9100-1(c) of the regulations, the Commissioner of the 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) defined 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 Code section 414(r) and Section 3 of Revenue Procedure 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 Revenue Procedure 93-40. Section 301.9100-3 provides that the Commissioner will grant an extension of time when the taxpayer 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 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 relief 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.

Documentation submitted by Company A shows that Individual N prepared an analysis of Company A's separate lines of business for the 1991 and 1992 plan years. In after Company A acquired Company C, Individual N prepared a prospective analysis with respect to the 1993 plan year and included Company C in that analysis. Applications for determination letters were filed by Individual N with respect to Plan U, Plan V and Plan W in A copy Individual N's separate line of business analysis, as previously mentioned, was attached to each Form 5307 along with a document that disclosed to the Service that the submissions request determinations as to separate lines of business, as indicated in the response to item 10a on Form 5307. Further, Company A received favorable determination letters with respect to these plans in and respectively.

Company A retained and relied on Company P, an employee benefits consulting firm, to complete and prepare the paperwork necessary for Company A to elect QSLOB treatment. Company P served as the third party administrator for Company A's retirement plans and relied on Company P's expertise in employee benefit matters and assumed that it was fully capable of preparing the QSLOB filings on its behalf. Company A reasonably believed that the reports and information submitted to the Service by Individual N of Company P fully disclosed and provided notice to the Service that it was operating separate lines of business as it received favorable determination letters from the Service with respect to its qualified plans. Company A thereafter operated its businesses as QSLOBs on the belief that proper notice had been given to the Service. Such notification was timely given by the date prescribed in Section 3.05 of Revenue Procedure 93-40.

Section 3 of Revenue Procedure 93-40 provides that employers must provide QSLOB notice by filing Form 5310-A, and attaching information as described in section 3.04 of Revenue Procedure. (The revised Form 5310-A was published by the Service in September 1994, prior to the date Company A filed its requests for determination letters with respect to its retirement plans.) Company A did not discover until 2003 that Company P did not file Forms 5310-A as required by Section 3, although Company P did file the necessary schedule of information as required in Section 3.04, but attached such information to the wrong form. Company A received favorable determination letters from the Service in response to its June 2004 applications and notification of QSLOB treatment and acted reasonably and in good faith when it thereafter began operating its businesses as QSLOBS as the Service did not request that Forms 5310-A be filed by Company A after the Service received the notification of QSLOB status as an attachment to Forms 5307.

Based on the information submitted and the representations contained therein, we believe that Company A has complied 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 in the manner provided for in Section 3 of Revenue Procedure 93-40, and that the other requirements of section 301.9100-1 of the regulations have been satisfied. Accordingly, Company A is granted a period of 30 days to comply with Section 3 of Revenue Procedure 93-40.

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 cannot be used or cited by others as precedent.

A coy of this ruling has been sent to your authorized representative pursuant to a power of attorney (Form 2848) on file in this office.

If you have any questions concerning this letter, 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 letter
Notification of Intention to Disclose