



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **200746014**
Release Date: 11/16/2007

AUG 20 2007

T:EP:RA:T3

UICs: 411.02-01
411.03-00

LEGEND:

Company M:

Division N:

Local O:

Union P:

Fund V:

Plan X:

Act L:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

State W:

This is in response to the _____, letter submitted by your authorized representative on your behalf, as supplemented by several pieces of correspondence of which the latest is dated _____, _____, in which you ask for letter rulings under sections 411(d)(6) of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request.

Fund V is a jointly trustee, employee retirement plan established under section 302 of Act L which your authorized representative asserts is intended to meet the qualification requirements of section 401(a) of the Internal Revenue Code. The administrative offices of Fund V are located in State W.

Fund V was established by a trust agreement on or about Date 1, 1962, pursuant to a collective bargaining agreement between Local O of Union P and Division N of Company M. Said collective bargaining agreement requires that participating employers contribute to the Fund on behalf of their employees.

Your authorized representative has asserted, on your behalf, that numerous employers contribute to Plan X on behalf of their employees (See section 1.7 of Plan X (below)).

The trust agreement establishing the Fund provides, in relevant part, that the specific benefits provided, and the eligibility requirements for such benefits, shall be set forth in Plan X. Pursuant to provisions of Plan X, eligible participants receive benefits upon retirement, death and disability. Relevant provisions, further described below, provide for "severance benefits" upon an affected Plan X participant's termination of employment.

A Plan X participant is currently permitted to elect a severance benefit ("Severance Benefit") upon termination of his employment and participation in Plan X. The Severance Benefit is a single sum cash payment equal to a percentage of employer contributions made to Plan X on behalf of the participant, starting with 50% after five (5) years of participation and increasing at a rate of 5% for each additional year, upon to a maximum of 100% after 15 years of participation.¹ Effective Date 4, 2001, Plan X was amended to eliminate the Severance Benefit for all benefits accrued after Date 4, 2001. Said Amendment provided that "Severance Benefits shall be terminated for all benefits accrued after Date 4, 2001. If a participant is eligible to repay a severance benefit

¹ Notwithstanding the Severance Benefit calculations, on Date 2, 1999, Plan X was amended to provide that the single sum cash payment will not be less than the actuarial equivalent of the terminated participant's accrued benefit. See section 10.2 of Plan X.

subsequent to Date 4, 2001, pursuant to either Federal law or Plan provisions, he will still have a protected right to take a distribution of the repaid benefit in the form of a single sum (severance) benefit”.

Relevant provisions of Plan X include:

1. Section 1.2 which defines “Accrued Benefit” as the monthly benefit commencing at Normal Retirement Age which has accrued to a Participant pursuant to the benefit formula described in Section 4.3 of Article IV.
2. Section 1.5(a) which defines “Eligibility Computation Period” as the twelve (12) consecutive month period beginning with the day the Employee first performs an hour of service (the employment commencement date) and subsequently completes at least three hundred fifty (350) hours of service for an Employer.
3. Section 2.1 which provides, in relevant part, that “Each person who becomes an Employee on or after Date 2, 1976, shall become a Participant on the first Date 2 or Date 6 following his satisfaction of the requirements of the Eligibility Computation Period”.
4. Section 4.3 which provides that a Participant’s monthly Normal Retirement Benefit shall be equal to his Accrued Benefit which shall be the sum of the amounts computed under paragraphs (a) through (h) found therein.

Section 4.3 further provides that “For Plan Years beginning after Date 5, 1983, if a Participant’s Normal Retirement Benefit does not begin as of the Normal Retirement Date because a timely application was not filed, the Normal Retirement Benefit shall be the greater of a) the Participant’s accrued benefit on the date benefits begin, or b) the Participant’s accrued benefit at the Normal Retirement Date, adjusted to its actuarial equivalent as of the date benefits are to begin.

5. Section 5.3(c) which, in summary, provides that any participant with at least 30 years of service under the Plan with at least one hour of covered employment after Date 2, 1999, shall receive 100% of his accrued benefit (the 30-year/100% early Retirement benefit).
6. Section 10.1 which provides that “A participant who has a termination of employment and meets the eligibility requirements for a Severance or Vested Benefit as set forth in Section 1.21 of Article I and this Section [1st anniversary of the date upon which a participant last had one hour of service]...prior to becoming eligible for normal, early, or disability retirement or prior to his death

shall...become entitled to receive a Severance Benefit, provided, at the time he has such a termination of employment, he had at least five (5) years of participation”.

7. Section 10.2 which provides that a terminated participant may elect to receive “Severance Benefits” even if he terminates employment after attaining age 55 as a result of work cessation as long as he has at least five (5) years of participation. Section 10.2 further provides “The Severance Benefit...shall be a single sum cash payment equal to a percentage of employer contributions made to the Fund on behalf of the terminated participant starting with 50% after 5 years of participation and increasing at the rate of 5% for each additional year of participation up to a maximum of 100% after 15 such years provided, however, that such single sum cash payment shall not be less than the actuarial equivalent of the terminated participant’s...accrued benefit”. Section 10.2 also provides that “Severance benefits shall be terminated for all benefits accrued after Date 4, 2001”.

A proposed amendment to section 10.2 of Plan X (which had not been adopted as of the date of this letter ruling request but which will be adopted to effectuate this ruling letter) provides:

“payment of a single sum Severance Benefit to a terminated participant shall effect a full cancellation of the terminated participant’s years of service, years of participation, and years of past and future credit under the Plan. Payment of a single sum Severance Benefit to a Terminated Participant shall not effect a cancellation of the terminated participant’s years of service for purposes of determining the participant’s vesting credit, nor shall the Terminated Participant be required to complete the initial Eligibility Period upon reemployment with an Employer”..

If a Participant elects a Severance Benefit for benefits accrued as of Date 4, 2001, the Participant’s eligibility for same and the percentage of the Employer Contributions payable will be determined by the Participant’s Years of Service earned as of the earlier of (1) his date of termination or (2) the effective date of this amendment. In addition, if a Participant elects a Severance Benefit and still has an accrued benefit for service rendered after Date 4, 2001, the Years of Service used to calculate the Participant’s Severance Benefit will not be used for purposes of attaining eligibility for a disability retirement benefit. However, the pre-severance service shall be included for purposes of determining eligibility for a benefit under section 5.3(c). Additionally, the pre-severance service will be used when determining the Participant’s accrued benefit upon retirement, including determining a participant’s accrued benefit under section 5.3(c) (the 30-year/100% early

retirement benefit). However, a Participant's accrued benefit upon retirement, including a participant's accrued benefit under section 5.3(c) (the 30-year/100% early retirement benefit) will be offset by the amount of the accrued benefit attributable to the Severance Benefit previously received by said participant.

It has been represented that notice intended to comply with the requirements of section 204(h) of Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), will be provided Plan X participants prior to the adoption of the proposed amendment to section 10.2 of Plan X.

8. Section 2.7 which defines a "Year of Participation" as "...the aggregate number of Plan years since the inception of the Original Plan for which any contributions were made to the Fund on his behalf". Once an employee becomes a participant (meaning he completes 350 hours within the first consecutive month period) he will be credited with a year of participation for every year that at least 8 hours of contributions have been paid on his behalf.
9. Section 12.2 which permitted a reinstated participant who previously received a Severance Benefit that was less than the actuarial equivalent of his accrued benefit, to repay his Severance Benefit, plus interest, in order to reinstate his previously forfeited service. Section 12.2 further provided that effective Date 2, 1999, all participants who received a Severance Benefit equal to 100% of the present value of their accrued benefit would not be permitted to repay this amount and in turn reinstate their years of service.
10. Section 1.7 which defines "Employer" to include:
 - a. any member of an Employee Association who is bound by the terms of a collective bargaining agreement between The Union and his Association to make contributions to the Trust fund;
 - b. any other Employer engaged in work coming within the Jurisdiction of the Union who is obliged, by a collective bargaining or other agreement, to make contributions to the Trust Fund;
 - c. the Union to the extent, and solely to the extent, that it employs business representative or other persons on whose behalf it makes contributions to the Trust fund.
 - d. effective as of Date 2, 1994, any other Employer established to administer fringe benefit, apprenticeship, educational, or related funds or other programs established through collective bargaining with the Union to the extent, and solely to the extent, such entity acts in the capacity of an employer of its employees on whose behalf contributions to the Trust

Fund are required in accordance with a collective bargaining or other agreement.

11. Section 1.21 which provides that "The term "Termination of Employment" shall mean the cessation of work (both within and outside the Jurisdiction of the Union) for a complete Plan Year, prior to death or retirement of an Employee. For purposes of determining eligibility for a Severance Benefit as described in Article IX (sic), Termination of Employment shall take place on the first anniversary of the date upon which a Participant last had one Hour of Service.

The First Amendment to the Amendment, Restatement and Continuation of Plan X, dated Date 3, 2001, provided, in relevant part, that "...Effective Date 4, 2001, the following paragraph shall be added as the last paragraph in Article VII, Section 12.2:

Severance benefits shall be terminated for all benefits accrued after Date 4, 2001. If a participant is eligible to repay a severance benefit subsequent to Date 4, 2001, pursuant to either Federal law or Plan provisions, he will still have a protected right to take a distribution of the repaid benefit in the form of a single sum (severance) distribution".

Date 3, 2001 occurred before Date 4, 2001.

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

1. If an affected Plan X participant terminates his employment (as that term is defined in section 1.21 of Plan X) with all employers (as defined in section 1.7 of Plan X) that contribute to Plan X subsequent to Date 4, 2001, and elects to receive a severance benefit based on his accrued benefit as of Date 4, 2001, said election, and receipt, which do not effectuate a cancellation of all years of service used to compute his/her severance benefit in accordance with relevant provisions of Plan X (noted above), will not result in a violation of section 411(d)(6) of the Code; and
2. Since, pursuant to the terms of Plan X (as amended)(referenced herein), an affected Plan X participant who terminates his employment and receives a severance benefit need not re-establish eligibility and does not forfeit years for vesting with respect to benefits accrued after Date 4, 2001, the amendments to Plan X (referenced herein) does not affect your response to our first ruling request.

With respect to your ruling requests, Code section 411(d)(6)(A) provides that a plan shall be treated as not satisfying the requirements of this section if the accrued benefit of a participant is decreased by an amendment to the plan, other than an amendment described in section 412(c)(8), or section 4281 of the Employee Retirement Income Security Act of 1974 ("ERISA").

Code section 411(d)(6)(B) provides, in relevant part, that, for purposes of subparagraph (A), a plan amendment which has the effect of—

- (i) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or
- (ii) eliminating an optional form of benefit,

with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits.

On August 11, 2005, "Final" Income Regulations were published regarding the "anti-cutback" rules of section 411(d)(6) of the Internal revenue Code and regarding the "notice" requirements of Code section 4980F. Section 1.411(d)-3(j) of the "Final" regulations provides that the regulations apply to amendments adopted on or after August 12, 2005.

Section 1.411(d)-4 of the "Final" Income Tax Regulations, Question and Answer-2(a)(1) provides, in relevant part, that a plan may not be amended to eliminate or reduce a section 411(d)(6) benefit that has already accrued, except as provided in sections 412(c)(8), section 4281 of the Employee Retirement Income Security Act of 1974 as amended (ERISA), and this section.

Section 1.411(d)-3(a)(1) of the "Final" Income Tax Regulations provides the general rule that a plan is not a qualified plan (and a trust forming part of such plan is not a qualified trust) if a plan amendment decreases the accrued benefit of any plan participant except as provided in section 412(c)(8), section 4281 of the Employee Retirement Income Security Act of 1974 as amended (ERISA), or other applicable law.

Section 1.411(d)-3(b)(1) of the "Final" regulations provides that, except as provided in this section, a plan is treated as decreasing an accrued benefit if it is amended to eliminate or reduce a section 411(d)(6)(B) protected benefit as defined in paragraph (g)(15) of this section. This paragraph (b)(1) applies to participants who satisfy (either before or after the plan amendment) the preamendment conditions for a section 411(d)(6)(B) protected benefit.

Section 1.411(d)-3(b)(3)(ii) of the "Final" Regulations provides that Code section 411(d)(6) only protects benefits that accrue before the applicable amendment date. Thus, a plan is permitted to be amended to eliminate or reduce an early retirement benefit, a

retirement-type subsidy, or an optional form of benefit with respect to benefits that accrue after the applicable amendment date without violating section 411(d)(6). However, Code section 4980F(e) and section 204(h) of ERISA require notice of an amendment to a plan that either eliminates or significantly reduces an early retirement subsidy or retirement-type subsidy.

Section 1.411(d)-3(g)(15) of the "Final" Regulations defines the term "section 411(d)(6)(B) protected benefit" as the portion of an early retirement benefit, a retirement type subsidy, or an optional form of benefit attributable to benefits accrued before the applicable amendment date.

Section 1.411(d)-3(g)(6)(iv) of the "Final" regulations defines "retirement type subsidy" as the excess, if any, of the actuarial present value of a retirement-type benefit over the actuarial present value of the accrued benefit commencing at normal retirement age or at actual commencement date, if later, with both actuarial present values determined as of the date the retirement-type benefit commences. Examples of retirement-type subsidies include a subsidized early retirement benefit and a subsidized qualified joint and survivor annuity.

As in effect on the date Plan X was amended to limit the severance benefit to benefits accrued no later than Date 4, 2001, Section 1.411(d)(6) of the Regulations, Q&A-5(c), Example 1, concludes that a plan amendment that does not change the annual benefit commencing at normal retirement age does not reduce the rate of future benefit accrual for purposes of section 204(h).

Code Section 401(a)(3) provides that a plan qualified within the meaning of Code section 401(a) must satisfy the requirements of section 410 (relating to minimum participation standards).

Code section 410(a) provides the plan participation rules. Sections 410(a)(5)(A), (B), (C) and (D) provide the rules governing which years must be considered and which may be disregarded for plan participation purposes.

Code section 411(a)(4) provides the rules governing service to be included in determining the nonforfeitable percentage of a plan participant's accrued benefit (the vesting rules).

Section 1.411(a)-7(d)(4)(ii) of the regulations provides that for purposes of determining an employee's accrued benefit derived from employer contributions under a plan, the plan may disregard service performed by the employee with respect to which (A) the employee receives a distribution of the present value of his nonforfeitable benefit attributable to such service at the time of such distribution; (B) the employee voluntarily elects to receive such distribution; (C) the distribution is made on a termination of the

employee's participation in the plan; and (D) the plan has a repayment provision in effect at the time of the distribution which satisfies the requirements of subdivision (iv) of this subparagraph.

Section 1.411(a)-7(d)(4)(iii) of the regulations provides, in relevant part, that with respect to an individual plan participant who receives a distribution of less than the present value of his accrued benefit under the plan, years of service attributable to said distributed benefit may not be disregarded for purposes of determining his years of service under sections 410(a)(3) and 411(a)(4).

Section 1.411(a)-7(d)(4)(iv)(B) of the regulations provides, by way of example, the situation in which an individual participates in a plan that provides both a subsidized joint and survivor annuity and a subsidized early retirement annuity benefit. Said fully vested participant receives a single sum distribution equal to the present value of his single life annuity normal retirement benefit. Said participant is not required to be provided with the right of repayment upon subsequent reemployment even if the participant's distribution did not reflect either the value of the subsidized joint and survivor benefit or the value of the early retirement annuity subsidy. The participant has no right of repayment even if he had satisfied at the time of distribution all of the conditions necessary to receive the subsidies.

Section 1.411(a)-7(d)(6)(i) (Other Rules) provides, in relevant part, ... "Similarly, the fact that a plan cannot disregard an accrued benefit attributable to service for which an employee has received a distribution because the plan does not satisfy the cash-out requirements of subparagraph (4) of this paragraph does not mean that the employee's accrued benefit (computed by taking into account such service) cannot be offset by the accrued benefit attributable to the distribution.

Section 1.411(d)-3(b)(3)(i) of the regulations, provides, in general, that section 411(d)(6) does not provide protection for benefits that are ancillary benefits, other rights and features, or any other benefits not described in Code section 411(d)(6).

Section 1.411(d)-3(g)(2)(ii) of the regulations provides that the term "ancillary benefit" not protected by Code section 411(d)(6) includes a benefit payable under a defined benefit plan in the event of disability (to the extent that the benefit exceeds the benefit otherwise payable) but only if the total benefit payable in the event of disability does not exceed the maximum qualified disability benefit, as defined in section 411(a)(9).

Section 1.411(d)-4 of the regulations, Question and Answer-2(a)(2)(i) provides that a plan may treat a participant as receiving his entire nonforfeitable accrued benefit under the plan if the participant receives his benefit in an optional form of benefit in an amount

200746014

determined under the plan that is at least the actuarial equivalent of the employee's nonforfeitable accrued benefit payable at normal retirement age under the plan.

With respect to the requested ruling requests, Plan X either has, or will be amended, to eliminate the severance benefit for all benefits accrued on or after Date 4, 2001. The amendments provide, in relevant part, that an electing Plan X participant's severance benefit will be based upon all years of service up to his date of termination (or date of amendment of section 10.2 of Plan X (if earlier)). Additionally, section 10.2 of Plan X (as amended) does not affect an electing Plan X participant's vesting under Plan X. Finally, an electing Plan X participant need not reestablish eligibility to receive additional benefits under Plan X (except as noted therein) upon reemployment with a contributing employer thereto. The amendments will not eliminate the eligibility to apply for said severance benefit with respect to benefits accrued prior to Date 4, 2001.

Thus, based upon the above, with respect to your ruling requests, we conclude as follows:

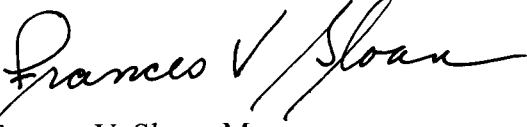
1. If an affected Plan X participant terminates his employment (as that term is defined in section 1.21 of Plan X) with all employers (as defined in section 1.7 of Plan X) that contribute to Plan X subsequent to Date 4, 2001, and elects to receive a severance benefit based on his accrued benefit as of Date 4, 2001, said election, and receipt, which do not effectuate a cancellation of all years of service used to compute his/her severance benefit in accordance with relevant provisions of Plan X (noted above), will not result in a violation of section 411(d)(6) of the Code; and
2. Since, pursuant to the terms of Plan X (as amended) (referenced herein), an affected Plan X participant who terminates his employment and receives a severance benefit need not re-establish eligibility and does not forfeit years for vesting with respect to benefits accrued after Date 4, 2001, the amendments to Plan X (referenced herein) do not affect our response to your first ruling request.

This ruling letter assumes that Plan X will be qualified within the meaning of section 401(a) at all times relevant thereto. It also assumes that the amendment to Plan X, referenced herein, will be adopted as proposed. Finally, it assumes that Notice complying with the requirements of section 204(h) of ERISA will be provided as indicated above.

In accordance with a power of attorney provided the Service, a copy of this letter ruling is being provided to your authorized representative.

If you have any questions concerning this letter ruling, please contact
, Esquire (ID: -) who may be reached at (not a toll-free
number) or (FAX).

Sincerely yours,


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

Enclosures:

Deleted copy of this letter
Notice of Intention to Disclose