TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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Company A	=	***
Company B	=	***
Company C	=	***
Plan X	=	***
State M	=	***
Date 1	=	***

Dear ***:

This letter is in response to a request for a letter ruling dated September 3, 2010, as supplemented by correspondence dated December 22, 2010, November 7, 2011, December 16, 2011, December 21, 2011 and May 7, 2012 submitted on behalf of Company A, by its authorized representatives, regarding the federal tax treatment under section 402(e) of the Internal Revenue Code ("Code") of shares of common stock of Company B that were acquired by the Plan X pursuant to a series of corporate transactions under Code sections 351, 355 and 368.

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

Company A, a State M corporation, established Plan X effective Date 1, for the benefit of its employees and the employees of its participating subsidiaries. Plan X is a calendar year defined contribution plan intended to be a qualified plan under Code section 401(a). It also includes a cash or deferred arrangement as described in Code section 401(k) and provides for employer matching contributions and participant after-tax contributions. Plan X participants are permitted to direct the investment of assets credited to their accounts in accordance with section 404(c) of the Employee Retirement Income Security Act of 1974 ("ERISA"). Among the investment funds available to participants is the Company A Stock Fund, which is a stock bonus plan and a non-leveraged employee stock ownership plan ("ESOP") as described in Code section 4975(e)(7). The Company A Stock Fund consists of Company A common stock that is readily tradable within the meaning of section 1.401(a)(35)-1(f)(5)(ii) of the Income Tax Regulations ("Regulations"). Participants may elect to receive payment of their accounts in a lump sum or periodic withdrawals. Certain participants may also elect to receive payment of their accounts in installments over a period that does not exceed their life expectancy.

Company C and Company B are wholly owned subsidiaries of Company A that were each created in anticipation of the corporate reorganization of Company A. During 2010, Company A contributed and transferred to Company C certain assets, and Company C assumed from Company A certain liabilities, in a transaction under Code section 351. Soon thereafter, Company A contributed the stock of Company C to Company B. During the first quarter of 2011, Company A spun off Company B by distributing a certain number of Company B shares to each shareholder of Company A in a corporate reorganization under Code sections 355 and 368 (the "Spin-Off"). Your authorized representative has represented that Company A has received the opinion of its tax advisor that this reorganization satisfies the requirements of Code sections 355 and 368.

Following the Spin-Off, Company A and Company B will no longer be part of the same controlled group of corporations within the meaning of Code sections 414(b), (c), (m) or (o).

In connection with the Spin-Off, Plan X will receive a certain number of Company B shares and will establish a Company B Stock Fund to hold such shares.

Participants in Plan X will not be permitted to invest new contributions or their existing account balances in the Company B Stock Fund. Instead, participants in Plan X will have until December 31, 2011, to voluntarily dispose of shares of Company B and reinvest the proceeds in other investments (including the Company A Stock Fund) pursuant to the terms of Plan X. Any assets that remain in the Company B Stock Fund on December 31, 2011, will be liquidated by the trustee of Plan X, and the proceeds thereof reinvested in Plan X's balanced fund.

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

1. The Company B shares acquired by Plan X as a result of the Spin-Off will be "securities of the employer corporation" for purposes of Code section 402(e)(4) and Revenue Ruling 73-29, 1973-1 C.B. 198, and the net unrealized appreciation in such shares may be excluded from gross income upon distribution to a participant or beneficiary on or before December 31, 2011, to the extent provided in Code section 402(e)(4).

2. The reinvestment restrictions placed on the Company A and Company B shares during 2011 do not cause Plan X to violate Code section 401(a)(35).

With respect to ruling request 1:

Code section 402(e)(4)(B) states, in pertinent part that, for purposes of sections 402(a) and 72, in the case of any lump sum distribution which includes securities of the employer corporation, there shall be excluded from gross income the net unrealized appreciation attributable to that part of the distribution which consists of securities of the employer corporation.

Code section 402(e)(4)(A) states, in pertinent part that, for purposes of sections 402(a) and 72, in the case of a distribution other than a lump sum distribution, the amount actually distributed to any distributee from a trust described in section 402(a) shall not include any net unrealized appreciation in securities of the employer corporation attributable to amounts contributed by the employee.

Code section 402(e)(4)(E)(ii) provides in pertinent part that, for purposes of section 402(e), the term "securities of the employer corporation" includes securities of a parent or subsidiary corporation (as defined in subsections (e) and (f) of Code 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 that 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)(3) of the Regulations sets forth certain special rules for determining the net unrealized appreciation on securities of the employer corporation that are attributable to employee contributions.

Under section 1.402(a)-1(d)(2) of the Regulations neither employee salary deferrals made pursuant to a cash or deferred arrangement nor matching contributions are treated as employee contributions for purposes of Code section 402(e)(4).

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 Revenue Ruling 80-138, 1980-1 C.B. 87, the Service held that the transfer of employer securities from an exempt trust maintained by a parent corporation and its subsidiary to a newly established exempt trust of the subsidiary will not change the basis of the securities for purposes of computing net unrealized appreciation in the securities because the transfer is not a taxable event.

With respect to ruling request 1, Company B was a wholly-owned subsidiary of Company A before the Spin-Off. Therefore, before the Spin-Off, Company B shares constituted "securities of the employer corporation" within the meaning of Code section 402(e)(4)(E). Pursuant to and simultaneously with the Spin-Off, Company B ceased to be a subsidiary of Company A. However, the Company B shares distributed to Plan X pursuant to the Spin-Off represent part of the pre-Spin-Off value of the Company A shares. Accordingly, with respect to ruling request 1, we conclude that the shares of Company B acquired by Plan X as a result of the Spin-Off will continue to be treated as "securities of the employer corporation" for purposes of Code section 402(e)(4) in accordance with Revenue Ruling 73-29, and the net unrealized appreciation in such shares may be excluded from gross income upon distribution to a participant or beneficiary on or before December 31, 2011, in a lump sum distribution, to the extent provided in Code section 402(e)(4), and section 1.402(a)-1(b)(2) of the Regulations. Similarly, in the case of a distribution to a participant or beneficiary on or before December 31, 2011, in a form other than a lump sum, the net unrealized appreciation in such shares may be excluded to the extent such shares are attributable to amounts contributed by the employee to the extent provided in

Code section 402(e)(4) and sections 1.402(a)-1(b)(2) and 1.402(a)-1(b)(3) of the Regulations.

With respect to ruling request 2:

Code section 401(a)(35) provides that a trust which is a part of an "applicable defined contribution plan" is not a qualified trust under Code section 401(a) unless the plan satisfies the diversification requirements of Code section 401(a)(35)(B), (C), and (D).

Code sections 401(a)(35)(B) and (C) generally provide, that in the case of the portion of an applicable individual's account attributable to employee contributions, elective contributions and employer contributions (with regard to participants who meet certain requirements) which is invested in employer securities, the participant must be able to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options that meet the requirements (D).

Code section 401(a)(35)(D)(ii)(II) provides that a plan is not permitted to impose restrictions or conditions with respect to the investment of employer securities that are not imposed on the investment of other assets of the plan.

Section 1.401(a)(35)-1(e)(1)(ii)(A) of the Regulations provides that the prohibition on restrictions or conditions with respect to the investment of employer securities applies to any direct or indirect restriction on an individual's right to divest an investment in employer securities that is not imposed on an investment that is not employer securities, as well as a direct or indirect benefit that is conditioned on investment in employer securities.

Section 1.401(a)(35)-1(e)(ii)(B) of the Regulations provides that a plan imposes an indirect restriction on an individual's right to divest an investment in employer securities if, for example, the plan provides that a participant who divests his or her account balance with respect to the investment in employer securities is not permitted for a period of time thereafter to reinvest in employer securities.

Section 1.401(a)(35)-1(e)(ii)(C) of the Regulations provides, however, that a plan does not impose an impermissible restriction or condition merely because it provides that an individual may not reinvest divested amounts in the same employer securities account but is permitted to invest such divested amounts in another employer securities account where the only relevant difference between the separate account is the section 401(e)(4) cost (or other basis) of the trust in the shares held in each account.

Code section 401(a)(35)(E)(i) provides in pertinent part that an "applicable defined contribution plan" is a defined contribution plan that holds any publicly traded employer security.

Code section 401(a)(35)(E)(ii) provides that the term "applicable defined contribution plan" does not include ESOPs if (I) there are no contributions held in such plan subject to section 401(k) or (m), and (II) such plan is a separate plan for purposes of section 414(l) with respect to any defined benefit plan or defined contribution plan maintained by the same employer or employers.

Code section 401(a)(35)(G)(iii) provides that the term "employer security" has the meaning given by section 407(d)(1) of ERISA.

Code section 401(a)(35)(G)(v) provides that the term "publicly traded employer securities" means employer securities which are readily tradable on an established securities market.

Section 1.401(a)(35)-1(f)(5)(ii) of the Regulations provides in pertinent part that a security is "readily tradable on an established securities market " if the security is traded on a national securities exchange that is registered under Section 6 of the Securities Exchange Act.

Section 1.401(a)(35)-1(g)(2) provides that Section 1.401(a)(35)-1 of the Regulations is effective for plan years beginning on or after January 1, 2011.

ERISA section 407(d)(1) defines the term "employer security" as a security issued by an employer of employees covered by the plan or by an affiliate of such employer.

ERISA section 407(d)(7) provides that a corporation is an affiliate of an employer if it is a member of a controlled group of corporations (determined by applying Code section 1563(a), except substituting 50 percent for 80 percent) of which the employer is a member.

The Company A shares held in the ESOP portion of Plan X are employer securities within the meaning of ERISA section 407(d)(1). The shares are also publicly traded employer securities within the meaning of Code section 401(a)(35)(E). Accordingly, Plan X is an "applicable defined contribution plan" subject to the requirements of Code section 401(a)(35).

Following the Spin-Off, Company B ceased to be the employer of the participants covered under Plan X. In addition, the taxpayer has represented that Company A and Company B are not affiliated employers within the meaning of ERISA section 407(d)(7). Accordingly, Company B shares in Plan X are not investments

in employer securities subject to the diversification requirements of Code section 401(a)(35).

Thus, with regard to ruling request 2, we conclude that the restriction on the Company B shares following their divestment by participants, to reinvest the proceeds in Company B shares, does not cause Plan X to violate Code section 401(a)(35).

With regard to Company A shares, we conclude that the reinvestment restriction on these shares following their divestment by participants, to reinvest the proceeds in Company B shares, does not cause Plan X to violate Code section 401(a)(35)((D)(ii)(II), since the same restriction is imposed on all of Plan X's investments.

This ruling letter is based on the assumption that Plan X is qualified under Code section 401(a) at all times relevant to the transactions described herein.

This ruling letter is also based on the assumption that the corporate reorganization described herein meets the requirements of Code sections 355 and 368.

Ruling 2, as it relates to ERISA section 407(d), was coordinated with the U.S. Department of Labor.

Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the transaction described above under any other provision of the Internal Revenue Code or of Title I of ERISA.

This ruling 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.

The original and a copy of this ruling letter are being sent to your authorized representatives in accordance with a power of attorney on file in this office.

If you have any questions about this letter, please contact *** at ***. Please refer to *** .

Sincerely yours,

Jason Levine
Acting for
Donnie Littlejohn

Donzell H. Littlejohn
Manager Employee Plans
Technical Group 2

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose

cc. ***