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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200213029

DEC 31 2001

UIL: 401.00-00
T:EP:RA:T3

Legend:

Taxpayer =

Plan X =

Plan Y =

State A =

This is in response to a request for a private letter ruling dated July 26, 2001, submitted on your behalf by your authorized representative. The request concerns whether a proposed election offered to employees participating in Plan X and Plan Y constitutes a cash or deferred election under section 401(k) of the Internal Revenue Code.

The Taxpayer is a State A corporation that has established Plan X, a defined benefit plan, and Plan Y, a defined contribution plan, for the benefit of its employees. Plan X and Plan Y have both been issued favorable determination letters as to their qualification under Code section 401(a) from the appropriate Area Office of the Internal Revenue Service on March 19, 2001 and November 15, 2000, respectively. All participants in Plan X are also eligible to participate in Plan Y.

The Taxpayer proposes to amend Plan X and Plan Y to offer all participants in Plan X a one time irrevocable election to cease future participation in Plan X effective December 30, 2001, and thereafter receive an enhanced contribution to Plan Y known as the "Employer Regular Contribution". The Employer Regular Contribution would be made by the Taxpayer to Plan Y in the amount of 1, 2, 3 or 4 percent of the participant's annual compensation depending on his number of years of credited service. Participants who make this election ("transferring participants") will cease to accrue benefits under Plan X after December 30, 2001. Participants in Plan X who do not make this election will continue to participate in Plan X in accordance with its terms.

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No distributions will be made to the transferring participants as a result of the transfer. The Plan X benefits accrued through December 30, 2001, by the transferring participants will be held, administered and distributed in accordance with the terms of Plan X. Plan X will be further amended to provide that effective December 30, 2001, any employee hired by the Taxpayer will not have the option of participating in Plan X. The obligations to the transferring participant under Plan X will be those that have accrued through December 30, 2001, and the obligations to the transferring participant under Plan Y are enhanced only to the extent of the Employer Regular Contribution commencing after December 30, 2001 and continuing thereafter.

The only additional benefit a transferring participant will receive is the Employer Regular Contribution to Plan Y. The Taxpayer is not providing any additional compensation for the transfer (either now or in the future) in the form of cash or some other taxable benefit. The Taxpayer has neither incurred nor will incur any obligations to transferring participants apart from those under Plan X and Plan Y as a result of the transfer.

Section 8.04 of Revenue Procedure 2001-4, 2001-1 I.R.B.121, states that the Service will not issue a letter ruling on the partial determination of an employee plan. Accordingly, we are unable to respond to your second ruling request.

Based on the above facts, the following ruling requested:

The election of any transferring participant to cease to accrue benefits in Plan X effective December 30, 2001 and thereafter and to become eligible to receive the Employer Regular Contribution as described in Plan Y will not be a cash or deferred election as described in section 401(k) of the Code and the regulations thereunder.

Section 1.401(k)-1(a)(3) of the Income Tax Regulations states that a cash or deferred election is any election (or modification of an earlier election) by an employee to have the employer either provide an amount to the employee in the form of cash or some other taxable benefit that is not currently available, or contribute an amount to a trust or provide an accrual or benefit under a plan deferring the receipt of compensation.

The election here for the Plan X participant is between continuing benefit accruals under Plan X or having additional amounts contributed to Plan Y on his behalf. There is no option to receive cash or some other taxable benefit that is not currently available.

Accordingly, we conclude that the election of any transferring participant to cease to accrue benefits in Plan X effective December 30, 2001 and thereafter and to become eligible to receive the Employer Regular Contribution as described in Plan Y will not be a cash or deferred election as described in section 401(k) of the Code and the regulations thereunder

This ruling is based on the assumption that Plan X and Plan Y remain qualified under Code section 401(a) at all times relevant to this ruling request. We are expressing no opinion on whether the language of the proposed Plan X and Plan Y plan amendments will affect the qualified status of those plans. A determination as to the continued qualified status of Plan X and Plan Y as amendment is within the jurisdiction of the appropriate Internal Revenue Service Area Office.

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

The author of this letter is (ID#) who may be reached at ( ) - .

Sincerely yours,

Frances V. Sloan, Manager
Employee Plans Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:
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