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

APR 16, 2002

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401.00-00
403.00-00
3405.00-00

Attention:

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Company A =

Company B =

Company C =

Company D =

Company E =

State M =

State N =

Dear

This is in response to your ruling request dated October 18, 2002 in which you request rulings regarding certain U.S. federal income tax consequences of the proposed conversion of Company A, a State M mutual life insurance company into a stock corporation (the "Conversion") and the merger of Company B, a wholly-owned subsidiary of Company C, with and into Company A (the "Merger") which will follow immediately after the Conversion. Letters dated January 2, 2002, and March 6, 2002 supplemented the request.

Company A is a mutual insurance company. Company A files a calendar year consolidated federal income tax return for the affiliated group of which it is the common parent. Company A reports its taxable income on the accrual basis. Company A does not have any loss carry-forwards to

Company A organized under the laws of State M, whose business is concentrated in life insurance products. Company A offers a broad range of life insurance and variable annuity products and related services. For federal income tax purposes, Company A qualifies as a " life insurance company" taxable under Part I of Subchapter L of the Code.

As a mutual life insurance company, Company A has no authorized, issued or outstanding capital stock. Pursuant to State M law, and Company A's Articles of Incorporation and by-laws, Company A's policyholders, through the purchase of its insurance policies, acquire both insurance coverage from, and membership rights in, Company A. The membership rights of policyholders consist principally of the right to vote in the election of directors of Company A and the right to share in any residual value of Company A in the event that Company A were to be liquidated. Each Company A policyholder is entitled to one vote regardless of the number or size of the policies that he or she holds.

Company C is a corporation organized under the laws of the State N. It was formed in *************** as a holding company for Company D and other companies that comprise the retirement savings operations of the Company E group of companies. Company C is a leading provider of long-term savings and retirement products in the United States.

The shares of Class A common stock of Company C (the "Company C Class A Shares") are registered under the Securities Exchange Act of 1934, as amended. All the shares of Class B common stock of Company C (the "Company C Class B Shares") are held by Company E. The Company C Class B Shares held by Company E currently represent approximately ****% of the total number of outstanding shares of all classes of common stock. The Company C Class A Shares and Company C Class B Shares vote together as a single class on all matters, with the Company C Class B Shares having 10 votes per share (compared to one vote per Company C Class A Share). As a result, Company E currently holds in excess of ****% of the voting power of Company C.

Company B will be formed as a State M corporation for the purpose of completing the Merger. Prior to the effective date of the Conversion and Merger (the "Effective Date"), Company B will be a wholly-owned subsidiary of Company C. Company C will, prior to the Effective Date, contribute cash to Company B in an amount equal to the total amount of cash and policy credits to be paid or funded by Company C as consideration in the Merger (as discussed below); Company B will not have any other assets or liabilities.

Company A sells various policies and contracts, including certain tax advantaged products. Policyholders that hold policies that are in force on the date on which Company A's Board approves the Plan of Conversion will be eligible to receive consideration under the terms of the Plan of Conversion and the Merger Agreement. It is anticipated that approximately ********* eligible policyholders will be entitled to receive consideration under the terms of the Plan of Conversion and the Merger Agreement.

Company A is expected to convert from a mutual life insurance company to a stock company pursuant to a Plan of Conversion. Immediately following the Conversion, and pursuant to the same plan, Company B will merge with and into Company A under the terms of an Agreement and Plan of Merger, dated ***************, among Company C, Company B and Company A (the "Merger Agreement").

In the Conversion, eligible policyholders of Company A will be issued shares of voting common stock of Company A ("Company A Shares") or, for certain policyholders, cash or policy credits with respect of the extinguishment of their membership interests in Company A.

Eligible policyholders receiving cash or policy credits in the Conversion will be those for whom the receipt of such consideration is mandatory under the terms of the Plan of Conversion and the Merger Agreement, as described in more detail below. Company A Shares issued in the Conversion will be held by a conversion agent (the "Conversion Agent") as stockholder of record on behalf of the eligible policyholders. In the Merger, eligible policyholders of Company A that received Company A Shares in the Conversion will exchange those shares for Company C Class A Shares or, at their option (and subject to the limitations described in detail below) cash or policy credits.

As used in the Plan of Conversion, the term "policy credit" means consideration to be paid in the form of an increase in cash value, account value, dividend accumulations, face amount, extended term period or benefit payment, as appropriate, depending on the policy. Because State M law does not provide for demutualizations structured as reverse triangular mergers or permit the direct merger of a stock company into a mutual company, it would not be possible for Company A to become a wholly-owned subsidiary of Company C through the merger of Company B with and into Company A without the prior conversion of Company A from a mutual company to a stock company under State M law. As a result, it is necessary for Company A to convert from a mutual insurance company to a stock corporation under State M law before Company B can merge with and into Company A as described above. In addition, because Company A holds nontransferable licenses and policy form approvals necessary for the operation of its business, and for other substantial business reasons, Company A must be the surviving entity in any merger. State M law further provides that any such conversion and merger must be fair and equitable to the mutual company and its policyholders.

The Plan of Conversion, including the Merger, must be approved by the Commissioner of Insurance of State M (the "Commissioner"), who will approve the Plan of Conversion if, after holding a public hearing thereon, the Commissioner determines that the Plan of Conversion complies with all provisions of State M law and is fair and equitable to the company and the policyholders of Company A. Then, before the Conversion and the Merger can become effective, the Plan of Conversion must be put to a vote of members and approved by two-thirds of those who cast votes. Assuming these conditions are met, Company A expects the Conversion and the Merger to take effect in the first half of

The principal purpose of the Conversion is to convert Company A from a mutual life insurance company into a stock life insurance company in order to enhance its strategic and financial flexibility, to facilitate the acquisition of Company A by Company C and to make possible a distribution of value to eligible policyholders pursuant to the Plan of Conversion and the Merger Agreement.

On the effective Date, Company A will be converted from a mutual life insurance company into a stock company in accordance with the State M Insurance Company Mutual-to-Stock Conversion Act, as amended (the "Conversion Act"). Immediately thereafter, Company B will merge with and into Company A in accordance with the requirements of the Conversion Act and the applicable provisions of the State M Business Corporation Law of 1998. It is anticipated that the following steps will occur on or prior to the Effective Date:

1. Company C will make a capital contribution in cash to Company B in an amount equal to the excess of (x) the total amount of cash and policy credits that are to be paid or credited to

eligible policyholders in the transactions, over (y) the total amount of cash and policy credits to be paid or funded by Company A from its surplus as it existed prior to the Conversion and Merger. The amount to be paid or funded by Company A from its surplus as it existed prior to the Merger will, when added to the amount paid or payable by Company A in respect of costs and expenses incurred in connection with the Conversion and the Merger, be equal to 10% of the value of Company A as of the Effective Date without taking into account any diminution resulting from such costs and expenses.

2. Company A will convert to a stock company. Under the Plan of Conversion, eligible policyholders that are Mandatory Consideration Recipients (as defined below) will receive cash or policy credits in respect of the extinguishment of their membership interests in the Conversion. The remaining eligible policyholders will be issued Company A Shares in respect of their membership interests in Company A, which will be evidenced by a single global certificate registered in the name of the Conversion Agent who will hold the shares on their behalf.

3. Immediately following the conversion and under the terms of the Plan of Conversion, the Conversion Agent will vote the Company A Shares in favor of the Merger.

4. Company B will merge with and into Company A, with Company A as the surviving corporation. The Company A Shares evidenced by the global certificate will be extinguished. In exchange therefor, eligible policyholders will be entitled to receive Company C Class A Shares, cash or policy credits, determined as described below, which, it is expected, will be transferred to eligible policyholders as soon as practicable following the Effective Date, but in no event more than 60 days after the Effective Date.

Eligible policyholders who own the following types of policies ("Mandatory Policy Credit Policies") will be required under the terms of the Plan of Conversion to receive policy credits in the Conversion in exchange for their membership interests:

(i) a policy that is an individual retirement annuity contract ("IRA") within the meaning of section 408(b) or 408A or a tax sheltered annuity contract ("TSA") within the meaning of section 403(b); '

(ii) a policy that is an individual annuity contract that has been issued pursuant to a plan qualified under section 401(a) or 403(a) directly to the plan participant; or

(iii) a policy that is an individual life insurance policy that has been issued pursuant to a plan qualified under section 401(a) or 403(a) directly to the plan participant.

The following eligible policyholders will be required under the terms of the Plan of Conversion to receive cash in the Conversion in exchange for their membership interests:

(i) an eligible policyholder whose address for mailing purposes as shown on Company A's Records is located outside the United States;

(ii) an eligible policyholder whose address for mailing purposes as shown on Company A's Records on the Effective Date is an address at which mail is undeliverable or deemed to be undeliverable in accordance with guidelines approved by the Commissioner; or

(iii) an eligible policyholder, with respect to whom Company A determines in good faith to the satisfaction of the Commissioner that it is not reasonably feasible or appropriate to provide consideration in the form that such eligible policyholder would otherwise receive.

Eligible policyholders described in the preceding two paragraphs are referred to herein as "Mandatory Consideration Recipients." All other eligible policyholders will be entitled to receive Company A Shares in the Conversion, which will be evidenced by the single global certificate issued to the Conversion Agent. Consideration in the Conversion will be allocated among eligible policyholders in accordance with actuarial principles as described in the Plan of Conversion.

In the Merger, eligible policyholders who were issued Company A Shares in the Conversion will exchange those shares for the right to receive Company C Class A Shares, cash or policy credits, which will be transferred to them within no more than 60 days following the Merger. Eligible policyholders that own group annuity contracts designed to fund benefits under a retirement plan which is qualified under section 401(a) or section 403(a) of the Code (including a plan covering employees described in section 401(c)) that do not affirmatively elect to receive Company C Class A Shares or cash in the Merger will receive policy credits ("Qualified Plan Recipients") in exchange for the Company A Shares held by the Conversion Agent on their behalf. All other eligible policyholders will have the option of electing to receive cash, rather than Company C Class A Shares ("Optional Cash Recipients", and together with the Qualified Plan Recipients, "Optional Consideration Recipients") in exchange for the Company A Shares held by the Conversion Agent on their behalf. It is possible that not all eligible policyholders expressing a preference for cash or optional policy credits in the Merger will receive them. Instead, the aggregate amount of cash and policy credits available will be limited, as described in detail below. If elections for cash and policy credits are over-subscribed, available cash and policy credits will first be paid or credited to Mandatory Consideration Recipients and will then be paid or credited sequentially to Optional Consideration Recipients, starting with electing eligible policyholders entitled to receive the smallest amount of consideration and continuing to electing policyholders receiving the largest amount of consideration at which all Optional Consideration Recipients at that level of consideration can be paid with the available funds. No policyholder will receive a combination of cash or optional policy credits and Company C Class A Shares.

Each Company A Share issued in the Conversion to an eligible policyholder (other than an Optional Consideration Recipient) will be exchanged in the Merger for one Company C Class A Share in a one for one exchange. The amount of cash or value of policy credits received by each Mandatory Consideration Recipient or Optional Consideration Recipient in the Conversion or the Merger will be based on the number of Company C Class A Shares such policyholder would have received if such policyholder had received Company C Class A Shares in the Merger and the average market value of such Company C Class A Shares for the 15 consecutive trading days ending on the fifth trading day immediately preceding the Effective Date.

The amount of cash and value of the policy credits that may be paid or credited pursuant to the Plan of Conversion and the Merger Agreement, in the aggregate, will not exceed the sum of (a) the total amount paid or credited that will be funded out of Company A' s surplus as it existed prior to the Merger, which will be limited as described above, plus (b) additional amounts paid or credited with funds supplied by Company C as a capital contribution to Merger Sub, which cannot exceed 20% of the value of Company A as of the

Effective Date after taking into account amounts paid or credited out of Company A's surplus pursuant to clause (a) above. The amount of cash and policy credits paid or credited will, if necessary, be further adjusted so that such amount will in no event exceed the amount necessary for special counsel to Company A and special counsel to Company C to deliver their opinions that the Merger qualifies as a reorganization within the meaning of section 368(a).

All policies issued by Company A and in force prior to the consummation of the Plan of Conversion will remain outstanding in accordance with their terms. Policy premiums and guarantees will not be affected by the consummation of the Conversion and the Merger, nor will benefits payable under policies or policy values (except in the case of policies whose holders will receive compensation in the form of policy credits). Policy dividends on participating policies will continue to be paid as declared.

Pursuant to the Plan of Conversion, Company A will, for policyholder dividend purposes only, operate a closed block for the benefit of individual policies paying experience-based policy dividends (the "Closed Block"). For accounting purposes only, assets of Company A will be allocated to the Closed Block in an amount that produces cash flows which, together with anticipated revenue from the Closed Block policies and contracts, are expected to be sufficient to support the Closed Block policies including, but not limited to, provisions for payment of claims and certain charges and taxes, and to provide for continuation of dividend scales payable for , if the experience underlying such scales (including the portfolio interest rate) continues, and to allow for appropriate adjustments in such scales if such experience changes. Assets in the Closed Block remain as general account assets of Company A and are fully subject to the claims of creditors of Company A, like any general account assets.

The fair market value of Company A stock received by its members together with the cash and policy credits will approximately equal the fair market value of the proprietary interests in Company A. Except for Company A Shares to be exchanged in the merger, Company A has no plan to redeem or otherwise reacquire any of the stock to be issued in the recapitalization. At the time of the recapitalzation, Company A will not have outstanding any warrants, convertible securities or any other right that is convertible into any class of stock or securities of Company A. The recapitallization is a single isolated transaction and is not part of a plan to periodically increase the proportionate interest of any shareholder in the assets or earnings and profits of Company A. Each of the parties to the recapitalization will pay its own expenses, if any, incurred in connection with the transaction. Company A is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3) of the Code.

Based on the foregoing, you request the following rulings:

1. For federal income tax purposes, Company A will have converted from a mutual company to a stock company prior to the merger of Company B into Company A. As a result of the conversion, the eligible policy holders of Company A will receive cash, policy credits or Company A voting stock in exchange for their membership interests.

2. The conversion of Company A from a mutual insurance company to a stock insurance company will constitute a recapitalization and, therefore, qualify as a reorganization

within the meaning of section 368(a)(1)(E) of the Code. Company A will be a party to the reorganization within the meaning of section 368(b) of the Code.

3. No gain or loss will be recognized by Company A's eligible policyholders on the exchange of their membership interests solely for Company A shares.

4. The basis of a Company A membership interest is zero. The basis of Company A shares received in exchange for Company A membership interests will equal the basis of Company A membership interests surrendered therefor.

5. The holding period of the Company A stock received by a Company A eligible policyholder will include the period the eligible policyholder held such Company A membership interest surrendered in exchange therefor.

6. No gain or loss will be recognized by Company A on the issuance of Company A shares in exchange for Company A membership interests.

7. The addition of policy credits to the Mandatory Policy Credit Policies and contracts owned by Qualified Plan Recipients pursuant to the Plan of Conversion will not be treated as a distribution under such retirement arrangements or a contribution to such retirement arrangements and, consequently, will not result in the imposition of (a) income tax on distributions from qualified retirement plans pursuant to section 72(e), (b) the 10 per cent penalty tax on early distributions from qualified retirement plans pursuant to section 72(t), (c) the 6 per cent tax on excess contributions to IRAs pursuant to section 4973 or (d) the 10 per cent tax on excess contributions or excess aggregate contributions to certain TSAs and qualified plans pursuant to section 4979.

8. Policy credits will not result in current taxable income to the policyholders of Mandatory Policy Credit Policies or the Qualified Plan Recipients but will be includible in the taxable income of the distributee, in the taxable year of actual distribution, pursuant to section 72(a), 72(e) or 402, as applicable.

9. Policy credits will not be treated for purposes of section 72(c)(1) or 72(e)(6) as part of the investment in the Mandatory Policy Credit Policies, but will be treated for purposes of sections 403(b)(10) and 408(b)(3) as investment earnings under such policies attributable to the year such policy credits are added to such policies.

10. Policy credits will not be treated as distributions to, or contributions by, Qualified Plan Recipients, but will be treated as investment earnings under the applicable group annuity contract attributable to the year such policy credits are credited to such group annuity contracts.

11. For purposes of section 403(b)(11) and the effective date provisions applicable thereto, a pro rata portion of the policy credits added to TSAs to which contributions have been made pursuant to a salary reduction agreement will be treated as earnings attributable to such contributions and will be treated as credited under the TSAs in the year such policy credits are added to the TSAs pursuant to the Plan of Conversion.

12. The addition of policy credits to Mandatory Policy Credit Policies or contracts held by Qualified Plan Recipients, pursuant to the Plan of Conversion will not constitute

"designated distributions" within the meaning of section 3405(e)(1)(A) and will not be subject to any withholding requirement under section 3405(b).

Section 368((a)(1)(E) of the Code provides that the term "reorganization" means a recapitalization. Section 368(b) of the Code provides, in part, that the term "party to a reorganization" includes (1) a corporation resulting from a reorganization, and (2) both corporations in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another.

With respect to ruling requests one through six we conclude:

1. For federal income tax purposes, Company A will have converted from a mutual company to a stock company prior to the merger of Company B into Company A. As a result of the conversion, the eligible policyholders of Company A will receive cash, policy credits or Company A voting stock in exchange for their membership interests.

2. The conversion of Company A from a mutual insurance company to a stock insurance company will constitute a recapitalization and, therefore, qualify as a reorganization within the meaning of section 368(a)(1)(E) of the Code. Company A will be a party to the reorganization within the meaning of section 368(b) of the Code.

3. No gain or loss will be recognized by Company A's eligible policyholders on the exchange of their membership interests solely for Company A shares.

4. The basis of a Company A membership interest is zero. The basis of Company A shares received in exchange for Company A membership interests will equal the basis of Company A membership interests surrendered therefor (i.e zero).

5. The holding period of the Company A stock received by a Company A eligible policyholder will include the period the eligible policyholder held such Company A membership interest surrendered in exchange therefor.

6. No gain or loss will be recognized by Company A on the issuance of Company A shares in exchange for Company A membership interests.

Section 403(b)(1) of the Code provides, generally, that amounts contributed by certain tax-exempt employers to an annuity contract purchased from an insurance company by such an employer for an employee shall be excluded from the gross income of the employee for the taxable year of contribution and that the amount actually distributed to any distributee under such a contract shall be taxable to such distributee in the year distributed under section 72. Section 403(b)(2) imposes a limit on the maximum amount which may be contributed to a tax-sheltered annuity described in section 403(b) on behalf of an employee in any taxable year. Section 403(b)(10) provides that the provisions of section 403(b)(1) will not apply to an annuity unless requirements similar to the minimum distribution requirements of section 401(a)(9) are met with respect to such annuity. Section 403(b)(11) provides that the provisions of section 403(b)(1) will not apply to an annuity unless, under the annuity, distributions attributable to contributions made pursuant to a salary reduction agreement may be paid only when the employee attains age 59 ½ , separates from service, dies, or becomes disabled; or in the event of hardship. Distributions in the event of hardship may not include income attributable to salary reduction contributions. The distribution limitations of section

403(b)(11) do not apply to distributions attributable to assets held in the tax-sheltered annuity arrangement described in section 403(b) as of the close of the last year beginning before January 1, 1989. P.L. 99-514 (the "Tax Reform Act of 1986") section 1123(e)(2), as amended by P.L. 100-647 ("TAMRA") section 101 1A(c)(11).

Section 408(b) of the Code defines an IRA annuity as an annuity or endowment contract which is issued by an insurance company and which meets the requirements of section 408(b). Section 408(b)(3) imposes requirements similar to the distribution requirements of section 401(a)(9) on distributions of the entire interest of the contract owner. Section 219 permits an individual taxpayer to deduct from gross income amounts contributed to an IRA, subject to the maximum annual deduction limitations specified in section 219(b). Section 408(b)(2) establishes the annual limit on contributions and premiums to an IRA. Sections 402(c) and 408(d)(3), relating to rollover contributions, permit an individual taxpayer to purchase an IRA using funds distributed from certain other plans, subject to certain requirements relating to the nature and amount of the distribution. Section 408(d)(1) provides that amounts paid or distributed from an IRA shall be included in gross income by the payee or distributee in the manner provided in section 72.

Section 72(a) of the Code generally provides that gross income includes any amount received as an annuity under an annuity, endowment, or life insurance contract. Section 72(e)(2) provides that any amount which is received under an annuity, endowment or life insurance contract and is not received as an annuity, (i) if received on or after the annuity starting date, shall be included in gross income, and (ii) if received before the annuity starting date, shall be included in gross income to the extent allocable to income on the contract and shall not be included in gross income to the extent allocable to the investment in the contract. Section 72(c)(4) defines the annuity starting date, in part, as the first day of the first period for which an amount is received as an annuity under the annuity contract. Section 72(e)(1) provides that for purposes of section 72(b) the investment in the contract as of the annuity starting date is the aggregate amount of premiums or other consideration paid for the contract, minus the aggregate amount received under the contract before such date, to the extent that such amount was excludable from gross income under this subtitle, or prior income tax law. Section 72(e)(3) provides that an amount shall be treated as allocable to income on the contract to the extent that such amount does not exceed the excess of the cash value of the contract immediately before the amount is received, over the investment in the contract at the time. Section 72(e)(5) provides, in part, that, with certain exceptions, an amount distributed from a trust described in section 401(a), which is exempt from tax under section 501(a), or is received from a contract purchased by a trust described in section 401(a), purchased as part of a plan described in section 403(a) or described in section 403(b), that the proceeds shall be included in gross income, but only to the extent it exceeds the investment in the contract. Section 72(e)(6) provides that the investment in the contract, as of any date, is the aggregate amount of premiums or other consideration paid for the contract as of such date, minus the aggregate amount received under the contract before such date to the extent such amount was excludable from income.

Section 72(t) of the Code provides, in part, that, if any taxpayer receives any amount from a qualified retirement plan (as defined in section 4974(c)) prior to certain dates or the occurrence of certain events specified in section 72(t)(2) the taxpayer's tax for the taxable year shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income.

Section 4973 of the Code imposes an excise tax equal to 6 percent of the amount of any excess contribution to an IRA. This 6 percent tax applies for each taxable year of the IRA owner, during which such excess contributions remain in such IRA, determined as of the end of the taxable year. An excess contribution under section 4973 is defined as a contribution in excess of the maximum amount that may be contributed to an IRA.

Section 4979 of the Code imposes an excise tax equal to 10 percent of the excess aggregate contributions under a tax-sheltered annuity plan described in section 403(b) for a taxable year. Excess aggregate contributions under section 4979 are defined, in part, as the sum of the employer matching contributions and employee contributions, actually made, on behalf of highly compensated employees, within the meaning of section 414(q), for a plan year in excess of the maximum amount of such contributions permitted under the actual contribution percentage test of section 401(m)(2) for such plan year.

Section 401(a)(9) of the Code requires, in part, that the entire interest of an employee under a qualified retirement plan be distributed, beginning no later than April 1 of the calendar year following later of the calendar year in which the employee attains age 70 ½ or the calendar year in which the employee retires, over the life or life expectancy of the employee (or over the joint lives or joint life expectancy of the employee and a designated beneficiary). Proposed Income Tax Regulations section 1.401 (a)(9)-1, provides, in general, that the amount required to be distributed under section 401(a)(9) for each calendar year must be determined each year on the basis of the employee's, and any designated beneficiary's, life expectancy and the value of the employee's benefit. The proposed regulations also provide that in the case of a benefit in the form of an individual account, the benefit used in determining the minimum distribution for a distribution calendar year is the account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year.

Section 3405 of the Code requires the payor of a "designated distribution," within the meaning of section 3405(e)(1), to withhold certain amounts from such distributions. In general, absent an election under section 3405(e)(1), to withhold certain amounts from such distributions. In general, absent an election under section 3405(b)(2) made by a recipient, section 3405 requires the payor to withhold on distributions from employer deferred compensation plans, IRAs, and commercial annuities. Section 3405(c) provides that in the case of an "eligible rollover distribution", as defined in section 3405(c)(3), the payor of such distribution shall withhold from such distribution an amount equal to 20 percent of such distribution. Section 3405(e)(1)(B)(ii) provides that the term "designated distribution" does not include the portion of any distribution which it is reasonable to believe is not includible in gross income.

Central to our analysis of your submitted ruling requests is the question of whether or not membership interests in a mutual insurance company are within the stated plans.

In this regard, any membership interests in a mutual insurance company which arise from the purchase of an insurance contract are inextricably tied to the contract from the time of purchase. These membership interests are created by operation of state law solely as a result of the policyholder's acquisition of the underlying contract from a mutual insurance company and cannot be transferred separately from that contract. Prior to conversion, the membership interests have no determinable value apart from the insurance contract itself. Further, if the insurance contract is surrendered by the policyholder or, in the event an insurance contract is terminated by payment of benefits to the contract beneficiary, these membership interests cease to exist, having no continuing value. The membership rights associated with the tax qualified retirement contracts, are acquired as a direct result of tax-favored payments to a mutual insurance company. Indeed, these membership interests cannot be obtained by any purchase separate from an insurance contract issued by Company A. In view of the foregoing, such interests are part of the tax qualified retirement contracts, created pursuant to sections 401(a), 403(b), and 408(b) of the Code respectively.

While it has been recognized that consideration received in a demutualization transaction is in exchange for a membership interest in a mutual insurance company, and not from or under an insurance contract, such a distinction does not require the detachment of such consideration from the tax qualified retirement contracts, which consists of both the contracts and all other interests which arise with the purchase of such a contract. See, Revenue Ruling 71-233, 1971-1 C.B. 113. Rather, contracts and the related membership interests must be viewed as part of a program of "interrelated contributions and benefits" which are retained within the plans. Cf., Income Tax Regulation section 1.72-2(a)(3)(i).

The planned issuance of policy credits does not constitute a distribution to the annuitants. The conversion of membership interests, is a mere change in form of one element within the arrangement to another. Since the issuance of policy credits increases the accumulation value of the annuity contracts, the amounts in the policies are treated, for purposes of sections 401(a)(9), 403(b)(10), 403(b)(11), 408(b)(3), 408(a)(6) and of the Code, in the same manner as any other return of, or return on, an investment within the arrangements described above, and are not regarded as having been received by the policyholder. Such amounts representing the policy credits will be considered as part of the respective balances to the credit of the employees in the plans.

Under sections 402(a), 403(b)(1) and 408(d) of the Code, only amounts paid or distributed under the applicable plans, will be included in the gross income of the distributee under the rules of section 72. Section 72(e), dealing with the tax treatment of amounts not received as an annuity, provides for the inclusion of such amounts when received by the distributee. As policy credits will be issued in exchange for membership interests, such interests being held within the applicable plans, no amount is treated as received by, or includible in the gross income of any policyholder, under such plans. For purposes of section 72(e)(3), the value of policy credits which will be added to the tax-qualified retirement contracts will not be regarded as part of the investment in the contracts, an amount which under section 72(e)(6) consists of the aggregate amount of premiums or other consideration paid for the contract. In addition, as no amount is to be treated as having been distributed as a result of the conversion nor received by the tax-qualified retirement policyholders outside the plans, the additional 10 percent tax imposed by section 72(t) does not apply.

Likewise, the planned issuance of policy credits does not constitute a contribution of such credits by the annuitants. Thus, no excess contributions can be attributed to the addition of these policy credits to the pension annuities.

Section 3405(b) of the Code requires a payor to withhold income taxes on certain "designated distributions" (as described in section 3405(e)(1)), including distributions from or under an employer deferred compensation plan, an individual retirement plan or a commercial annuity. Section 6047(d) generally requires that the employer maintaining, or the plan administrator of, a plan from which designated distributions may be made, and any person issuing a contract pursuant to which designated distributions may be made, to report payments under the plan or contract. The addition of policy credits within the tax-sheltered annuity arrangement described in section 403(b), IRA arrangement, or other qualifying plan, pursuant to the conversion, does not result in the distribution of any amounts to individual policyholders, within the meaning of section 3405(e)(1)(a), and thus, will not be subject to any requirement to withhold or the reporting requirements under section 6047(d).

Accordingly, with respect to ruling requests seven through twelve, we conclude:

7. The addition of policy credits to the Mandatory Policy Credit Policies pursuant to the Plan of Conversion will not (i) be treated as a distribution from such policy which is a TSA in violation of section 403(b)(11) that would cause such TSA to fail to qualify as tax-sheltered annuity described in section 403(b) or (ii) be treated as a transaction described in section 408(e) that could cause such policy which is an IRA to become disqualified under section 408(b).

8. The addition of policy credits to the Mandatory Policy Credit Policies and contracts owned by Qualified Plan Recipients pursuant to the Plan of Conversion will not be treated as a distribution under such retirement arrangements or a contribution to such retirement arrangements and, consequently, will not result in the imposition of (a) income tax on distributions from qualified retirement plans pursuant to section 72(e), (b) the 10 per cent penalty tax on early distributions from qualified retirement plans pursuant to section 72(t), (c) the 6 per cent tax on excess contributions to IRAs pursuant to section 4973 or (d) the 10 per cent tax on excess contributions or excess aggregate contributions to certain TSAs and qualified plans pursuant to section 4979.

9. Policy credits will not result in current taxable income to the policyholders of Mandatory Policy Credit Policies or the Qualified Plan Recipients but will be includible in the taxable income of the distributee, in the taxable year of actual distribution, pursuant to section 72(a), 72(e) or 402, as applicable.

10. Policy credits will not be treated for purposes of section 72(c)(1) or 72(e)(6) as part of the investment in the Mandatory Policy Credit Policies, but will be treated for purposes of sections 403(b)(10) and 408(b)(3) as investment earnings under such policies attributable to the year such policy credits are added to such policies.

11. Policy credits will not be treated as distributions to, or contributions by, Qualified Plan Recipients, but will be treated as investment earnings under the applicable group annuity contract attributable to the year such policy credits are credited to such group annuity contracts.

12. For purposes of section 403(b)(11) and the effective date provisions applicable thereto, a pro rata portion of the policy credits added to TSAs to which contributions have been made pursuant to a salary reduction agreement will be treated as earnings attributable to such contributions and will be treated as credited under the TSAs in the year such policy credits are added to the TSAs pursuant to the Plan of Conversion.

13. The addition of policy credits to Mandatory Policy Credit Policies or contracts held by Qualified Plan Recipients, pursuant to the Plan of Conversion will not constitute

"designated distributions" within the meaning of section 3405(e)(1)(A) and will not be subject to any withholding requirement under section 3405(b).

The ruling that the Conversion constitutes a recapitalization, and therefore will qualify as a reorganization within the meaning of section 368(a)(1)(E) is conditioned on Company A being considered the same entity before and after the Conversion under State M law. No opinion is expressed regarding the Merger. See Rev. Proc. 2002-3, Sec 3.01(29) 2002-2, I.R.B. 154.

This ruling is directed only to the taxpayer who requested it and applies only to Plan X as proposed to be amended as of the date of this ruling. Section 6110(j)(3) of the Code provides that this ruling may not be used or cited as precedent

If you have any questions concerning these rulings, please contact ****************** (ID ********) at (***) ********. Please refer to T:EP:RA:T3.

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

Sincerely yours,

Frances V. Sloan

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

Enclosures:
Deleted copy of letter
Notice of Intention to Disclose
Copy of Letter to Authorized Representative

CC: