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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SIN 414.09-00

DEC 16 2003

SE:T:EP:RA:T2

ATTN:
General Counsel

LEGEND:

System A =

State B =

City C =

Plan X =

Plan Y =

Plan Z =

Board P =

Statute T =

Title W =

Dear

This letter is in response to a request for a private letter ruling dated February 20, 2002, as supplemented by correspondence dated October 3, 2002, February 18, 2003, February 28, 2003, June 20, 2003 and November 20, 2003, submitted on your behalf by your behalf by your authorized representative.

The following facts and representations have been submitted:

System A is a retirement system established primarily for the public employees of State B. Board P is a nine-member board and is responsible for the general administration and management of System A. System A is governed primarily by Statute T of the State B Revised Code and Title W of the State B Administrative Code.

System A currently administers Plan X, a defined benefit plan, that provides age and service retirement benefits, disability benefits, and survivor benefits for public employees throughout State B who are not covered by another state or local retirement system. Membership in Plan X is required for all public employees, irrespective of the hours worked or salary earned, beginning with the first day of employment, unless the employee is covered by another state retirement system in State B, by the City C Retirement System or is otherwise exempted or excluded from membership. Plan X includes both a mandatory employee contribution, which may be picked-up by the employer pursuant to section 414(h)(2) of the Internal Revenue Code (the "Code"), and an employer contribution. Further, members may make contributions to purchase service credit in Plan X and these contributions also may be picked-up by the employer. Finally, members may also make additional voluntary, after-tax contributions to purchase an additional annuity. Plan X, for purposes of this ruling, is assumed to be a plan that is qualified under section 401(a) of the Code, and a governmental plan within the meaning of section 414(d).

Section 145.23 of Statute T provides for the creation of the following funds:

-Employees' Savings Fund - includes the contributions of members that are held in trust pending qualification for either a monthly benefit or a request for a refund;

-Employers' Accumulation Fund - includes employer payments to be used as the reserves for the payment of benefits;

-Annuity and Pension Reserve Fund and Survivors' Benefit Fund - established reserves to pay monthly benefits of retired members and beneficiaries currently receiving a benefit

-Income Fund - includes investment earnings; and

-Expense Fund - provides for the disbursement of administrative expenses and is appropriated from the Income Fund

Upon the retirement of a member, the member's accumulated contributions in the Employees' Savings Fund and the full amount of the member's pension reserve in the Employers' Accumulation Fund are transferred to the Annuity and Pension Reserve Fund. State B statutes have added a Defined Contribution Fund for accounts under Plan Y and Plan Z.

In accordance with a State B General Assembly mandate, System A established Plan Y, a defined contribution plan, under which benefits are based solely upon the participant's account balances, and Plan Z, a combined plan, under which benefits are based partially on a reduced defined benefit formula and partially on the participant's account balances. You represent that Plan Y and Plan Z will be effective January 1, 2003. Plan Y and Plan Z, for purposes of this ruling, are assumed to be plans that are qualified under section 401(a) of the Code and are governmental plans within the meaning of section 414(d).

As previously stated, Plan Y is a defined contribution plan that provides for an individual account for each member and under which benefits are based solely on amounts that have been accumulated in that account. Each participant will have four accounts in Plan Y. A Participant Contribution Account that will be credited with a participant's mandatory employee contributions made pursuant to section 3.03 of Plan Y. Employee mandatory contributions are a percentage of earnable salary. If an employer has elected to pick up employee contributions to Plan X, the employer will also pick up and pay the employee's mandatory contributions to Plan Y. A participant's Employer Contribution Account will be credited with employer contributions made pursuant to section 3.02 of Plan Y. Participants will also have a Miscellaneous Contribution Account, which will be credited with voluntary after tax employee contributions made pursuant to section 3.04 of Plan Y, and a Rollover Account which will be credited with eligible rollovers made pursuant to Article V of Plan Y.

Section 2.01 of Plan Y provides that an eligible individual who becomes employed in a position covered by Statute T on or after the Effective Date (January 1, 2003)

may elect, in writing, to become a participant in Plan Y not later that one hundred eighty (180) days after the date on which the individual's employment begins. If the individual does not elect to become a member of Plan Y before the end of the one hundred eighty (180) day period, the individual is deemed to have elected to continue to participate in Plan X. An election to participate in Plan Y is effective as of the date employment begins and is irrevocable, except as provided in Section 2.03 of Plan Y and section 145.814 of Statute T. Section 2.01 further states that an individual may only be an active participant in one of the following plans at any one time: Plan X, Plan Z, or this plan, Plan Y. Employee and employer contributions for each payroll period after the effective date of an election under Section 2.01 shall be credited in accordance with Section 3.02 (Employer Contributions) and Section 3.03 (Mandatory Employee Contributions) of Plan Y.

Section 2.02 of Plan Y is only applicable to members or contributors of Plan X who have less than 5 years of service as of December 31, 2002. Section 2.02 of Plan Y provides that an eligible member or contributor who, as of the last day of the month immediately preceding the Effective Date (January 1, 2003) of Plan Y, has less than five years of Total Service Credit, may elect, in writing, to become a participant in Plan Y not later than one hundred eighty (180) days after the effective date. If the member or contributor does not elect to participate in Plan Y before the end of the one hundred eighty (180) day period, the member or contributor is deemed to have elected to continue to participate in Plan X. If a member or contributor makes a written election within the prescribed time to participate in Plan Y, the member may also request that System A transfer funds from Plan X to Plan Y on his or her behalf.

On the request of a member or contributor who elects to participate in Plan Y, Section 2.02(a) provides that System A shall (1) credit to the Participant Contribution Account the Accumulated Contributions standing to the credit of the member in the Employees' Savings Fund and any other amounts standing to the credit of the member in a fund under section 145.23 of Statute T, other than deposits made by the member or contributor under division (C) of section 145.23 of Statute T; (2) credit to the Miscellaneous Contribution Account any deposits made by the member or contributor under division (C) of section 145.23 of Statute T; and (3) cancel all service credit and eligibility for any payment, benefit, or right under Plan X with respect to the amounts described in (1) above. A request to transfer amounts described above

shall be made at the time the member files an election under Section 2.02. For each member who elects to transfer amounts described in (1) above, the participant shall receive years of participation for vesting under Article VII of Plan Y in an amount that corresponds to the amounts described in (1) above that are transferred from Plan X to Plan Y. An election to transfer from Plan X to Plan Y under this section shall take effect on the effective date and, except as provided for in section 145.814 of Statute T, is irrevocable upon receipt. Employee and employer contributions for each payroll period after the effective date of an election under Section 2.02 of Plan Y shall be credited in accordance with Section 3.02 (Employer Contributions) and Section 3.03 (Mandatory Employee Contributions) of Plan Y. A member or contributor of Plan X who elects pursuant to section 2.02 of Plan Y to participate in Plan Y shall be ineligible for any benefit or payment under Plan X and shall be forever barred from claiming or purchasing service in Plan X or any other State B retirement system for service covered by the election, unless otherwise permitted as a result of a change in election under Section 2.03 of Plan Y.

Section 2.03 of Plan Y provides that in addition to the elections under Sections 2.01 and 2.02, an active participant in Plan Y may subsequently elect, in writing, to become a participant in either Plan X or Plan Z (1) once prior to attaining five years of Total Service Credit; (2) once after attaining five and no more than ten years of Total Service Credit; and (3) once after attaining ten years of Total Service Credit. An election that is not used within the specified period may not be carried over to a subsequent period.

A participant who elects to cease active participation in Plan Y and begin participation in either Plan X or Plan Z will only be entitled to the rights and benefits to which the participant was entitled under Plan Y as of the date the participant ceases active participation in Plan Y and begins participation in either Plan X or Plan Z. The member or contributor may, however, continue to direct the investment of funds in the Participant's Vested Accounts, and all investment gains, losses, and fees shall continue to be credited or charged to the Participant's Vested Accounts in accordance with Plan Y. The participant's rights and benefits as of the date the participant ceases active participation shall continue to be governed by the terms of Plan Y.

The election shall take effect on the first day of the month following the date the election is filed and is irrevocable on receipt by System A. An election under Section 2.03 of Plan Y shall only apply to contributions made by or on behalf of the participant after the effective date of an election. A participant who elects pursuant to Section 2.03 to participate in either Plan X or Plan Z may elect to transfer the Participant's Vested Accounts (the sum of the Participant Contribution Account, the Miscellaneous Contribution Account, the Rollover Account, and the vested amount in the Employer Contribution Account) from Plan Y to purchase service credit in Plan X or Plan Z.

Section 6.01 of Plan Y provides not later than one hundred eighty (180) days after the effective date of an election to transfer under section 2.03, a participant in Plan Y who has elected to become a participant in Plan X under section 2.03 of Plan Y may transfer funds from Plan Y to Plan X in order to purchase service credit in Plan X for the participant's years of participation in Plan Y. The actuary shall determine the total amount of additional liability for each year of participation that is eligible for purchase. A participant may transfer funds from the following accounts in Plan Y to purchase service credit in Plan X: the Participant's Contribution Account, the vested portion of the Employer Contribution Account, the Miscellaneous Contribution Account, or the Rollover Account. All transfers under this section shall be made in accordance with Section 145.814 of Statute T and are subject to the applicable provisions of Plan X and any rules adopted by Board P. For each year of participation in Plan Y that is purchased in Plan X, the administrator shall cancel a corresponding year of participation in Plan Y.

Section 6.02 of Plan Y provides that not later than one hundred eighty (180) days after the effective date of an election to transfer under section 2.03 of Plan Y, a participant in Plan Y who has elected to become a participant in Plan Z under section 2.03 of Plan Y may transfer funds from Plan Y to Plan Z to purchase service credit in Plan Z for the participant's years of participation in Plan Y. The actuary shall determine the total amount of additional liability for each year of participation that is eligible for purchase. A participant may transfer funds from the following accounts in Plan Y to purchase service credit in Plan Z: the Participant's Contribution Account, the vested portion of the Employer Contribution Account, the Rollover Account or the Miscellaneous Contribution Account. All transfers under

this section shall be made in accordance with Section 145.814 of the Statute T and are subject to the applicable provisions of Plan Z and any rules adopted by Board P. For each year of participation in Plan Y that is purchased in Plan Z, the administrator shall cancel a corresponding year of participation in Plan Y.

Plan Z is described as a combined plan under which benefits are based partially on a reduced defined benefit formula and partially on the participant's account balances. Each participant in Plan Z will have three accounts: a Participant Contribution Account which will be credited with a participant's mandatory employee contributions made pursuant to section 3.03 of Plan Z. An employee's mandatory contributions are a percentage of earnable salary. If an employer has elected to pick-up employee contributions in Plan X, the employer will also pick up and pay the employee's mandatory contributions to Plan Z. Employer contributions will be used to fund the defined benefit portion of a participant's benefit under Plan Z and will be deposited in the Employer's Accumulation Fund in Plan X. Section 1.20 of Plan Z defines "Employers' Accumulation Fund" as the employers' accumulation fund established under section 145.23 of Statute T and further provides that there shall be separate accounts in the Employers' Accumulation Fund for Plan Z and Plan X. The Miscellaneous Contribution Account will be credited with voluntary after-tax employee contributions made pursuant to section 3.04 of Plan Z and a Rollover Account will be credited with eligible rollovers made pursuant to Article V of Plan Z.

An individual must affirmatively elect in writing to participate in Plan Z. Section 2.01 of Plan Z provides that an eligible individual who becomes employed in a position covered by Statute T on or after the Effective Date (January 1, 2003) of Plan Z, may elect, in writing, to become a participant in Plan Z not later than one hundred eighty (180) days after the date on which the individual's employment begins. Without an affirmative election within the one hundred eighty (180) day period, the individual is deemed to have elected to continue to participate in Plan X. An election to participate in Plan Z is effective as of the date employment begins and is irrevocable except as provided for in Section 2.03 of Plan Z and Section 145.814 of Statute T. Section 2.01 of Plan Z further provides that an individual may only be an active participant in one of the following plans at any one time: Plan X, Plan Y or this plan, Plan Z. Employee and employer contributions for each payroll period after the effective date of an election under

Section 2.01 shall be credited in accordance with Section 3.02 (Employer Contributions) and Section 3.03 (Mandatory Employee Contributions) of Plan Z.

Section 2.02 of Plan Z is only applicable to a member or contributor of Plan X who have less than five years of service as of December 31, 2002. Section 2.02 of Plan Z provides that an eligible member or contributor who, as of the last day of the month immediately preceding the Effective Date (January 1, 2003), has less than five years of Total Service Credit, may elect, in writing, to become a participant in Plan Z not later than one hundred eighty (180) days after the Effective Date. A member or contributor who fails to make such an election before the end of the one hundred eighty (180) day period is deemed to have elected to continue to participate in Plan X. If a member or contributor makes a written election within the prescribed time period to participate in Plan Z, the member or contributor may also request that System A transfer funds from Plan X to Plan Z on his behalf.

On the request of a member or contributor, System A shall, pursuant to section 2.02(a), (1) credit to the Participant Contribution Account the Accumulated Contributions standing to the credit of the member or contributor in the Employees' Savings Fund and any other amounts standing to the credit of a member or contributor in a fund under section 145.23 of Statute T, other than deposits made by the member or contributor under division (C) of section 145.23 of Statute T; (2) credit to the Miscellaneous Contribution Account any deposits made by the member or contributor under division (C) of section 145.23 of Statute T; and (3) cancel all service credit and eligibility for any payment, benefit, or right under Plan X with respect to the amounts described in (1) above. A request to transfer the amounts described in this section shall be made at the time the member files an election under this section. For each participant who elects to transfer the amounts described in (1) above, the participant shall receive Years of Contributing Service for purposes of determining eligibility for a benefit under Article IX of Plan Z in an amount that corresponds to the amounts transferred under (1) above.

An election under this section shall take effect on the effective date and, except as provided in section 2.03 of Plan Z and section 145.814 of Statute T, is irrevocable upon receipt. Employee and employer contributions for each payroll period after the effective date of an election under

Section 2.02 shall be credited in accordance with Section 3.02 (Employer Contributions) and Section 3.03 (Mandatory Employee Contributions) of Plan Z. A member or contributor of Plan X who elects under this section of Plan Z to participate in Plan Z shall be ineligible for any benefit or payment under Plan X and shall be forever barred from claiming or purchasing service credit within Plan X or any other State B administered retirement system for service covered by the election, unless otherwise permitted as a result of a change in election under Section 2.03 of Plan Z.

Section 2.03 of Plan Z provides that in addition to elections described in Section 2.01 and Section 2.02, an active participant in Plan Z may subsequently elect, in writing, to participate in either Plan X or Plan Y. The participant can make this election (1) once prior to attaining five years of Total Service Credit; (2) once after attaining five and no more than ten years of Total Service Credit; and (3) once after attaining more than ten years of Total Service Credit. An election, which is not used within the specified period, may not be made in a subsequent time period.

A participant who elects to cease active participation in Plan Z and becomes a participant in either Plan X or Plan Y shall only be entitled to the rights and benefits to which the participant was entitled under Plan Z as of the date the participant ceases active participation in Plan Z and begins participation in either Plan X or Plan Y, however, the member or contributor may continue to direct the investment of funds in the Participant's Accounts, and all investment gains, losses, and fees shall continue to be credited or charged to the Participant's Accounts in accordance with this plan, Plan Z. The participant's rights and benefits as of the date the participant ceases active participation in Plan Z shall continue to be governed by the terms of Plan Z.

Section 2.03 of Plan Z further provides that an election made under this section to participate in Plan X or Plan Y shall take effect on the first day of the month following the date the election is filed and is irrevocable upon receipt by System A. Further, an election under section 2.03 shall only apply to contributions made by or on behalf of the participant after the effective date of the election.

A participant in Plan Z who makes an election to participate in Plan X also may elect to transfer the Participant's Accounts from Plan Z to purchase service credit in Plan X. Such transfer shall be made in accordance

with Article VI of Plan Z (Transfers) and is subject to the applicable provisions of Statute T, the terms of Plan X, and any applicable rules adopted by Board P.

Section 6.01 of Plan Z provides that not later than one hundred eighty days (180) after the effective date of an election to transfer under section 2.03 of Plan Z, a participant in Plan Z who has elected to become a participant in Plan X under section 2.03 may transfer funds from Plan Z to Plan X in order to purchase service credit in Plan X for the participant's years of contributing service in Plan Z. The actuary shall determine the total amount of additional liability for each year of contributing service that is eligible for purchase. A participant may transfer funds from the following accounts to purchase service credit in Plan X: the Participant's Contribution Account, the Miscellaneous Contribution Account, or the Rollover Account.

System A has proposed to amend the foregoing provision of section 6.01 to provide that for each participant who elects to transfer funds to purchase service credit under section 6.01, and who, as of the effective date of an election to transfer under section 2.03, meets the service credit requirements specified in section 8.02(a) or section 8.02(b) of Plan Z, System A shall transfer from the separate account of the Employers' Accumulation Fund that holds the employer contributions made on the participant's behalf while a member of Plan Z to the account in the Employers' Accumulation Fund that holds the employer contributions made to Plan X an amount equal to the amount the participant would have been entitled to receive under section 8.02 had the participant terminated public service and met all other requirements of Article VIII. All transfers under this section shall be made in accordance with section 145.814 of Statute T and are subject to the applicable provisions of Plan X and any rules adopted by Board P. For each year of contributing service in Plan Z that is purchased in Plan X, the administrator shall cancel a corresponding year of contributing service in Plan Z.

Section 6.01 of Plan Z further provides that for each participant who elects to transfer funds under section 6.01, any amounts paid to Plan Z under Section 3.05 (Service Purchases) or Section 3.06 (Restoration) shall be credited to Plan X and deposited into the Employees' Savings Fund. If the amounts paid by the participant under section 3.05 and 3.06 are less than the amounts that would have been paid had the participant made the payments as a participant in Plan X, the participant may elect to receive a pro-rata

amount of service credit in Plan X, or may make an additional payment equal to the difference in order to receive the full amount of service credit.

Section 6.02 of Plan Z provides that a participant in Plan Y who has elected to become a participant in Plan Z may purchase service credit in Plan Z for the years of participation in Plan Y, subject to the applicable provisions of Plan Y and any rules adopted by Board P. The actuary shall determine the total amount of additional liability for each year of participation available for purchase. Any amounts transferred from Plan Y to Plan Z to purchase service credit shall be deposited to the member's credit in the Employees' Savings Fund, or any other appropriate fund under section 145.23 of Statute T.

Section 2.02 of Plan Y and section 2.02 of Plan Z deal with the initial election to select a retirement plan for members with less than five years of service credit as of Plan Y's and Plan Z's effective date. If a member so elects and chooses to have the member's accumulated contributions transferred to a new plan, System A will make the transfer described in section 2.02(a) of both Plan Y and Plan Z, and as provided in section 2.02(a)(3), cancel service credit and benefit eligibility for the member under Plan X with respect to the amounts transferred under section 2.02(a)(1) and (2) of Plan Y and Plan Z. If a member transfers participation but leaves his or contributions in Plan X, the member will continue to have the existing service credit in Plan X and will be eligible for whatever benefit such service would entitle him or her to in Plan X. Section 2.02(e) of both Plan Y and Plan Z is intended to apply to those members of Plan X who elect to participate in Plan Y or Plan Z under section 2.02 and who also elect to transfer their accumulated contributions upon their initial election. Thus, a member will receive credit in Plan X when his or her accumulated contributions are left on deposit in Plan X.

Under section 2.02(a) of Plan Y and Plan Z, if a member elects to participate in Plan Y or Plan Z and decides to transfer his or her accumulated contributions (which include employee contributions and interest) to the new plan, the contributions that have been made to Plan X by the employer to fund the benefit under Plan X will not be moved to the new plan.

Section 6.01 of Plan Z and section 145.814 of Statute T provide that if the amounts available for transfer from Plan Z to Plan X are less than the cost of the service purchase,

the member may either receive a pro-rata portion of the service credit or pay the difference. To the extent a member would have to make an after-tax contribution to Plan X to make up any shortfall in the cost of the service purchase, such contributions would be subject to the Code section 415(n) limits.

The following representation have been made with respect to subsequent elections to switch plan participation: (1) any subsequent elections to switch plan participation from Plan X to Plan Y as a result of changes in election will not result in any transfer of assets from Plan X to Plan Y; (2) in the case of an election to change participation from Plan Z to Plan Y, there will not be any transfer of assets; (3) any subsequent elections to switch participation from Plan X to Plan Z as a result of changes in election will not result in any transfer of assets from Plan X to Plan Z.

You represent that the percentage of compensation picked up by the Participating Employers is the same percentage in Plan X, Plan Y and Plan Z. The employee contribution rate in all three plans is currently set at 8.5 percent. You further represent that if the employee contribution rate is increased, the same increased rate will be applicable for Plan X, Plan Y and Plan Z. Section 3.03(b) of Plan Y provides that if an employer has elected to pick-up employee contributions in Plan X, the employer will also pick up and pay the employee's mandatory contributions to Plan Y. Similarly, section 3.03(b) of Plan Z provides that if an employer has elected to pick-up employee contributions to Plan X, the employer will also pick up and pay the employee's mandatory contributions to Plan Z. The employer will continue to pick up the employee's mandatory contributions whether the member elects to participate in Plan X, Plan Y or Plan Z. The change of participation elections as herein described do not allow a member to elect out of a pick up arrangement in Plan X, Plan Y or Plan Z.

Based on the foregoing facts and representations you have requested the following rulings:

(1) The election (whether initial or subsequent) of an eligible employee or member to transfer participation from or to Plan X, Plan Y or Plan Z, accompanied by any available direct transfer of funds to the newly chosen Plan, will not result in the receipt of currently taxable income to the

participant under any provision of the Code, specifically Code Sections 72 and 402.

(2) The election (whether initial or subsequent) of an eligible employee or member to transfer participation from or to Plan X, Plan Y or Plan Z, accompanied by an available direct transfer of funds to the newly chosen Plan, will not result in the imposition of an early distribution tax under Code section 72(t).

(3) The election (whether initial or subsequent) of an eligible employee or member to transfer participation from or to Plan X, Plan Y, or Plan Z, accompanied by any available direct transfer of funds to the newly chosen Plan, will not cause the amounts transferred to be considered annual additions to the new Plan for purposes of Code section 415(c).

(4) The election of an eligible employee or member to transfer participation from Plan Y to Plan X or Plan Z or from Plan Z to Plan X, accompanied by any available direct transfer of funds to Plan X or Plan Z to purchase service credit in the newly chosen Plan, will not cause the amounts transferred to be subject to the limits of Code Section 415(n), and the annual benefit under Plan X and Plan Z attributable to the amount transferred will not be subject to the limits of Code Section 415(b).

(5) The election (whether initial or subsequent) of an eligible employee or member to transfer participation from or to Plan X, Plan Y, or Plan Z will not constitute a cash or deferred arrangement within the meaning of Code section 401(k).

(6) That the direct transfer of funds from the Employers' Accumulation Fund to Plan X pursuant to the proposed amendment to section 6.01 of Plan Z (i) will not result in the receipt of currently taxable income to the participant under any provision of the Code, specifically Code sections 72 and 402; (ii) will not result in the imposition of an early distribution tax under Code section 72(t); (iii) will not cause the amounts transferred to be considered annual additions in Plan X for purposes of Code section 415(c); (iv)

will not cause the amounts transferred to be subject to the limits of Code section 415(n), and (v) the annual benefit under Plan X attributable to the amount transferred will not be subject to the limits of Code section 415(b).

Section 402(a) of the Code provides that, except as otherwise provided in this section, any amount actually distributed by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 (relating to annuities).

Section 72(t) of the Code provides for an additional tax on any amount received from a "qualified retirement plan" (as defined in section 4974(c), which includes plans described in section 401(a)). The additional tax for the taxable year in which such amount is received is equal to 10 percent of the portion of such amount which is includible in gross income, except where such income is distributed on or after an employee attains the age of 59½, or on account of one or more exceptions provided for under section 72(t)(2) of the Code.

Revenue Ruling 67-213, 1967-2 C.B. 149, involves the transfer of funds directly from the trust forming part of a qualified pension plan to the trust forming part of a qualified stock bonus plan. The revenue ruling provides, in part, that if a participant's interest in a qualified plan is transferred from the trust forming part of that plan to the trust forming part of another qualified plan without being made available to the participant, no taxable income will be recognized by reason of such transfer.

In this case the following plan participation elections are available: (1) eligible members or contributors can make an initial election to switch plan participation from Plan X to either Plan Y or Plan Z; and 2) subsequent to this initial election, eligible members or contributors participating in Plan Y can elect to switch plan participation from Plan Y to either Plan X or Plan Z; additionally, subsequent to the initial election, eligible members or contributors participating in Plan Z can elect to switch plan participation from Plan Z to either Plan X or Plan Y. If a member or contributor makes a written election to switch plan participation, the member or contributor, at the same time the written election is made, may also request that System A transfer assets between the plans. In

situations where the change to election provisions result in a transfer of assets between plans, such transfer is accomplished by a direct transfer of assets from one plan to another. The amounts transferred will not be distributed to nor made available to the participants. Eligible members can elect whether they want to participate in Plan X, Plan Y or Plan Z. Change of plan participation elections available initially and subsequent to an eligible member's initial election to switch plan participation provide that the plan assets will be transferred to the new plan or remain in the old plan, if the member so chooses. At no time will the transferred funds be distributed to the participants.

Accordingly, with respect to ruling requests one and two we conclude that the election (whether initial or subsequent) of an eligible employee or member to transfer participation from or to Plan X, Plan Y or Plan Z in a direct transfer of funds from one plan to the other plan pursuant to the terms of the change of participation election provisions in Plan X, Plan Y and Plan Z will not result in the receipt of currently taxable income to the participant under section 72 of the Code or section 402 of the Code, and will not result in imposition of an early distribution tax under section 72(t) of the Code.

Section 1.415-3(d)(1) of the regulations provides that where a defined contribution plan provides for mandatory employee contributions (as defined in section 411(c)(2)(C)) the annual benefit attributable to such contributions is not taken into account for purposes of applying the limitations on benefits described in paragraph (a) of this section. However, the mandatory employee contributions are considered a separate defined contribution plan subject to the limitations on contributions and other additions described in section 1.415-6 (limitations for defined contribution plans). Section 1.415-3(d)(2) of the regulations provides that voluntary employee contributions to a defined benefit plan are considered a separate defined contribution plan which is subject to the limitations on contributions and other additions described in section 1.415-6. You represent that mandatory employee contributions made to Plan X, Plan Y and Plan Z are treated as employer contributions if a participating employer has elected to pick up such contributions in accordance with section 414(h)(2) of the Code. Employee contributions that are picked up by an employer pursuant to section 414(h)(2) are treated as employer contributions and, as such, are not annual additions to a separate defined contribution plan for purposes of section 415(c).

Section 1.415-6(b)(2)(iv) of the regulations provides that the transfer of funds from one qualified plan to another will not be considered an annual addition for the limitation year in which the transfer occurs. Section 1.415-6(b)(3)(i) of the regulations provides that rollover contributions are not considered annual additions. Section 1.415-6(b)(3)(iv) of the regulations provides that the direct transfer of employee contributions from one qualified plan to another will not be considered an annual addition.

Change of plan participant elections available initially and subsequent to an eligible member's initial election to switch plan participation provide that plan assets will be transferred to the new plan, or remain in the old plan, if the member so chooses. Plan X, Plan Y and Plan Z are assumed to be qualified plans, therefore, if the eligible member elects to have his or her assets transferred to the new plan, such transfer will be accomplished by a direct transfer of assets from one qualified plan to another. The amounts that could be transferred from one plan to another consist of amounts that are excluded from the definition of annual additions pursuant to section 1.415-6(b)(2)(iv) and section 1.415-6(b)(3)(iv) of the regulations. Accordingly, with respect to your third ruling request, we conclude that the election (whether initial or subsequent) of an eligible member to transfer participation from or to Plan X, Plan Y or Plan Z in a direct transfer of funds from one plan to the other plan pursuant to the terms of the change of plan participation election provisions in Plan X, Plan Y and Plan Z, will not cause the amounts transferred to be considered annual additions in the transferee plan for purposes of section 415(c) of the Code.

Your fourth ruling request involves a transfer of funds from Plan Y to Plan X, from Plan Y to Plan Z, and from Plan Z to Plan X. Section 415(a)(1)(A) of the Code provides that a defined benefit plan is not a qualified plan if the plan provides for the payment of benefits with respect to a participant which exceed the limitation of section 415(b). Section 415(b) limits the amount of annual benefits in a defined benefit plan.

Section 1.415-3(b)(1)(iv) of the regulations provides that when there is a transfer of funds from one qualified plan to another, the annual benefit attributable to the assets transferred does not have to be taken into account by the transferee plan in applying the limitations of section 415. The annual benefit payable on account of the transfer

for any individual that is attributable to the assets transferred will be equal to the annual benefit transferred on behalf of such individual multiplied by a fraction, the numerator of which is the total assets transferred and the denominator of which is the total liabilities transferred.

Section 415(n) of the Code generally provides that if an employee makes contributions to purchase permissive service credit under a governmental plan, the plan may satisfy the Code section 415 limits either by treating the accrued benefit derived from all such contributions as an annual benefit in applying the Code section 415(b) limit or by treating the contributions as annual additions for purposes of Code section 415(c).

Section 415(n)(3) defines permissive service credit as service credit (i) recognized by the governmental plan for purposes of calculating a participant's benefit under the plan, (ii) which such participant has not received under such governmental plan, and (iii) which such participant may receive only by making a voluntary additional contribution, in an amount determined under such governmental plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Section 415(n)(3)(B) of the Code provides that a plan shall fail to meet the requirements of this section if (i) more than five years of permissive service credit attributable to nonqualified service are taken into account, or (ii) any permissive service credit attributable to nonqualified service is taken into account before the employee has at least five years of participation under the plan.

Section 415(n)(3)(C) of the Code generally defines "nonqualified service" as service other than (i) service as an employee of the federal government, any state or political subdivision or agency or instrumentality thereof; (ii) service as an employee of certain educational organizations described in section 170(b)(1)(A)(ii) of the Code; (iii) service as an employee of an association of employees who are described in (1); or (iv) military service. Section 415(n)(3)(C) further provides that in the case of such service previously described in (i), (ii), and (iii), such service will be nonqualified service if recognition of such service would cause a participant to receive a retirement benefit for the same service under more than one plan.

Under section 6.01 of Plan Y, a participant in Plan Y who elects to transfer to Plan X under section 2.03 of Plan Y may elect to transfer funds from the Participant Contribution Account, the Miscellaneous Contribution Account, the Rollover Account, or the vested portion of his or her Employer Contribution Account to purchase service credit in Plan X for service in Plan Y. Under section 6.02 of Plan Y, a member who elects to transfer plan participation from Plan Y to Plan Z may also elect to transfer amounts from the above-mentioned Plan Y accounts to purchase service credit in Plan Z. Under section 6.01 of Plan Z, a member who elects to switch plan participation from Plan Z to Plan X may also elect to transfer funds from the Participant's Contribution Account, the Miscellaneous Contribution Account and the Rollover Account to purchase service credit in Plan X. The proposed amendment to section 6.01 of Plan Z would also allow members who elect to purchase service credit in Plan X to have transferred from Plan Z's Employers' Accumulation Fund to Plan X's Employers' Accumulation Fund an amount equal to the amount determined under section 8.02 of Plan Z. The employer contributions made to Plan Z will be credited in the calculation of the cost to the participant of a service purchase in Plan X. Assuming Plan X, Plan Y and Plan Z are qualified plans, all of these transfers will constitute direct transfers between qualified plans.

The service that is purchased in Plan X from amounts transferred from either Plan Y or Plan Z is limited to the number of years of service credit such transferred amounts can purchase in Plan X. Further, the service that is purchased in Plan Z from amounts transferred from Plan Y is limited to the number of years of service credit the transferred amounts can purchase in Plan Z from Plan Y. An eligible employee or member cannot, under the terms of Plan X, Plan Y, or Plan Z make voluntary additional contributions to purchase the service credits in Plan X or Plan Z.

Section 415(n) provides special rules if an employee makes one or more contributions to a defined benefit governmental plan to purchase permissive service credit. Since the amounts transferred from Plan Y to Plan X or Plan Z, or the amounts transferred from Plan Z to Plan X are amounts transferred from one qualified plan to another qualified plan and not contributions to the plan, no employee is making a contribution to purchase past service credit. Accordingly, the special rules of section 415(n) relating to purchase of permissive service credit do not apply to such amounts.

The annual benefit under Plan X attributable to the amounts transferred from Plan Y or Plan Z and the annual benefit under Plan Z attributable to amounts transferred from Plan Y may fall into two categories: (1) the annual benefit attributable to service during participation in Plan Y or Plan Z and (2) in the case of a participant who had previously made a transfer from Plan X to Plan Y or Plan Z, the annual benefit attributable to service during prior participation in Plan X.

The sources of the amounts transferred, if any from Plan Y or Plan Z to Plan X or from Plan Y to Plan Z representing the annual benefit attributable to service during prior participation in Plan X were amounts previously transferred from Plan X to Plan Y or Plan Z. Because these transfers of funds from Plan X to Plan Y or Plan Z were transfers of funds from one qualified plan to another, these transfers were not annual additional to Plan Y or Plan Z within the meaning of section 415(c) of the Code. Thus, the annual benefit associated with the amounts previously transferred from Plan X to Plan Y or Plan Z continued to be taken into account under the limitations of section 415(b).

With respect to ruling number four, we conclude that the election of an eligible employee or member to transfer participation from Plan Y to Plan X or Plan Z, or from Plan Z to Plan X in a direct transfer of funds from one plan to another pursuant to the terms of change of participation election provisions in Plan X, Plan Y and Plan Z, to purchase service credit in either Plan X or Plan Z will not cause the amounts transferred to be subject to the limits of Code section 415(n), and any portion of the annual benefit under Plan X representing service while participating in Plan Y or Plan Z attributable to the amounts transferred from Plan Y or Plan Z to Plan X, will not be subject to the limitations of section 415(b) of the Code. However, the annual benefit associated with the amounts previously transferred from Plan X to Plan Y or Plan Z are taken into account, along with future accruals under Plan X, for purposes of applying the limits of section 415(b) of the Code. Similarly, amounts transferred from Plan Y to Plan Z, are not contributions subject to the limitations of section 415(n) of the Code, and any portion of the annual benefit under Plan Z representing service while a participant in Plan Y attributable to the amounts transferred from Plan Y to Plan Z will not be subject to the limitations of section 415(b) of the Code. (However, if, under section 6.01 of Plan Z and section 145.814 of Statute T, the amounts available

for transfer (from Plan Z to Plan X) under section 3.05 and section 3.06 of Plan Z are less than the amounts that would have been paid had the participant made the payments as a Plan X participant, to the extent the member makes an after-tax contribution to Plan X to make up any shortfall in the cost of the service purchase, such contributions would be subject to Code section 415(n) limits).

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

Section 1.401(k)-1(a)(3)(iii) of the regulations provides that an amount is currently available if it has been paid to the employee or if the employee is able currently to receive the cash or other taxable amount at the employee's discretion. An amount is not currently available if there is a significant limitation or restriction on the employee's right to receive the amount currently. Similarly, an amount is not currently available as of a date if the employee may under no circumstances receive the amount before a particular time in the future.

Neither the initial election to permit an eligible employee to participate in Plan Y or Plan Z in lieu of Plan X nor the subsequent changes in election which allow transfers to or from Plan X, Plan Y or Plan Z while an employee, provides an amount to the employee in the form of cash or other taxable benefit not currently available. Accordingly, with respect to ruling request five, we conclude that the election (whether initial or subsequent) of an eligible employee or member to transfer participation from or to Plan X, Plan Y or Plan Z will not constitute a cash or deferred arrangement within the meaning of section 401(k) of the Code.

Ruling request six involves a proposed amendment to section 6.01 of Plan Z and provides Plan Z participants who make an election to transfer plan participation pursuant to the terms of section 2.03 of Plan Z an opportunity to make an asset transfer from Plan Z to Plan X an amount calculated by reference to an employer "refund" amount (as calculated under section 8.02 of Plan Z) to purchase service credit under Plan X. Currently, under section 6.01 of Plan Z, a

member who makes an election under section 2.03 of Plan Z to transfer participation from Plan Z to Plan X may, at the time of the election, transfer funds from the Participant's Contribution Account, the Miscellaneous Contribution Account and the Rollover Account to purchase service credit in Plan X. Under section 145.23 of Statute T an Employers' Accumulation Fund is created to hold the employer payments used as reserves for the payment of benefits. Employer contributions used to fund the defined benefit portion of a participant's benefit under Plan Z are deposited in the Employers' Accumulation Fund as described in section 145.23 of Statute T. Section 1.20 of Plan Z provides, in part, that separate accounts are established in the Employers' Accumulation Fund for Plan X and Plan Z. An asset transfer under the proposed amendment to section 6.01 of the amount as calculated pursuant to section 8.02 of Plan Z would be accomplished in a direct transfer from one account in the Employers' Accumulation Fund to the other account in the Employers' Accumulation Fund. At no time will such amounts be distributed to the participants. Therefore, with respect to ruling number six, we conclude that the direct transfer of funds pursuant to the proposed amendment to section 6.01 of Plan Z (i) will not result in the receipt of currently taxable income to the participant under Code sections 72 and 402; (ii) will not result in the imposition of an early distribution tax under Code section 72(t); (iii) will not cause the amounts transferred to be considered annual additions in plan X for purposes of Code section 415(c); (iv) will not cause the amounts transferred to be subject to the limits of Code section 415(n), and (v) the annual benefit under Plan X attributable to the amount transferred will not be subject to the limits of Code section 415(b).

These rulings are based on the assumption that Plan X, Plan Y and Plan Z meet the requirements for qualification under section 401(a) of the Code at all relevant times.

No opinion is expressed as to the validity of the pick up arrangements of Plan X, Plan Y and Plan Z under section 414(h)(2) of the Code.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or the regulations that may be applicable hereto.

The conclusions reached herein are based on the provisions of Statute T and revised plan documents for Plan

Y and Plan Z submitted with your correspondence dated October 3, 2002.

This letter ruling is directed only 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.

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

If you have any questions concerning this ruling, 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 letter ruling
Notice 437