Internal Revenue Service

Number: **200544007**
Release Date: 11/4/2005
Index Number: 1001.00-00, 61.00.00-00, 1015.00-00, 1223.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B02
PLR-116392-04
Date:
July 28, 2005

X =

Y =

Z =

Plan 1 =

Plan 2 =

Plan 3 =

Plan 4 =

Plan 5 =

Plan 6 =

Plan 7 =

Plan 8 =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Trust 5 =

Trust 6 =

Trustee 1 =

Trustee 2 =

Dear :

This letter responds to a letter dated July 19, 2002, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting certain rulings under the Internal Revenue Code.

The information submitted states that X is the common parent of a controlled group of corporations, including Y. Eight retirement plans, Plans 1, 2, 3, 4, 5, 6, 7, and 8 (collectively, the Plans) are maintained for the benefit of the employees of X, its subsidiaries, and a former subsidiary, Z. These Plans participate in various trusts, Trusts 1, 2, 3, 4, 5, and 6 (collectively, the Trusts). Each Trust is a collective trust that holds assets for the benefit of two or more of the Plans. Each plan is qualified under § 401(a) and each Trust is a qualified trust under § 401(a) that is exempt from tax under § 501(a). Trusts 5 and 6 participate in five group trusts (the Group Trusts). Each Group Trust is intended to satisfy the group trust requirements of Revenue Ruling 81-100, 1981-1 C.B. 326, and accordingly is exempt from tax under § 501(a).

Trustee 1 is the sole trustee for Trusts 1 through 4. Trustees 1 and 2 are the co-trustees for Trusts 5 and 6. Plans 1, 3, 4, 5, 6, and 8 participate in Trusts 1, 3, and 5. Plans 2 and 7 participate in Trusts 2, 4, and 6. The Plans participating in a Trust are not required to participate in the same investment accounts in the same proportions. Rather, each Plan may invest separately in each investment account established under a Trust pursuant to that Plan's individually determined investment guidelines.

For certain Trust assets that are illiquid, difficult to value, or likely to generate unrelated business taxable income as defined in § 512, a separate account is

established for each such asset, as though that asset were the only asset in a segregated investment account. Y, a named fiduciary, assigns to each Plan participating in the asset, at the time the asset is acquired, a fixed percentage interest in the asset that remains in effect for the life of the asset. Accordingly, each Plan participating in that asset is allocated any net income (or loss) or distributions derived from the asset based on the Plan's fixed sharing percentage in the asset.

Two Plans, Plans 1 and 2, included coverage for the employees of Z, a former subsidiary of X that was spun off in 1999. To effect the spin off, the assets and liabilities attributable to Z's employees under Plans 1 and 2 were allocated to new Z sponsored plans, Plans 7 and 8. The assets of Plans 1 and 2 that could readily be transferred to new trusts established for Plans 7 and 8 were so transferred. However, Plans 7 and 8 retained beneficial interests, direct or indirect, in certain of the Trusts to the extent the assets of such Trusts were difficult to transfer or value. Consequently, Plan 8 was expected to continue its participation in Trusts 1, 3, and 5, and Plan 7 was expected to continue its participation in Trusts 2, 4, and 6. Plan 8 was added as a participating Plan in Trusts 1, 3, and 5, and Plan 7 was added as a participating Plan in Trusts 2, 4, and 6.

Due to the costs, complexities, and inefficiencies arising from the use of multiple trusts, X proposes to reduce the number of Trusts from six to two, and otherwise to reorganize the Trusts and their assets in the following manner: Trusts 1 and 3 will be merged into Trust 5 pursuant to an agreement and plan of merger. Trust 5 will survive and succeed to all of the assets and liabilities of Trusts 1 and 3. Trusts 1 and 3 will be terminated and the interests of Plans 1, 3, 4, 5, 6, and 8 in Trusts 1 and 3 will be exchanged for additional interests in Trust 5. Trusts 2 and 4 will be merged into Trust 6 pursuant to an agreement and plan of merger. Trust 6 will survive and succeed to all of the assets and liabilities of Trusts 2 and 4. Trusts 2 and 4 will be terminated and the interests of Plans 2 and 7 in Trusts 2 and 4 will be exchanged for additional interests in Trust 6.

The Group Trusts will not be directly affected by the proposed restructuring. After the mergers, Trusts 5 and 6 will continue to participate in the Group Trusts and will retain their respective interests, unaltered, in each Group Trust. Each merger is consistent with the terms of the Plans and Trust instruments.

In each merger, the surviving Trust will succeed to all assets and liabilities of the merging trust (which will be terminated) and each Plan will continue to hold, through its interest in the surviving Trust, the same beneficial interest in each asset of the merging Trust and the surviving Trust immediately after the merger that it owned immediately before the merger. The restructuring will not alter the aggregate fair market value of any Plan's beneficial interest in the aggregate assets of all Trusts, the value of benefits available to any Plan beneficiary, or any funding obligation of X or any subsidiary or former subsidiary to any Plan.

RULING 1

Section 61(a)(3) provides that gross income includes gains derived from dealings in property and, under § 61(a)(15), from an interest in a trust.

Section 1001(a) provides that the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in § 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized.

Section 1001(b) states that the amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. Under § 1001(c), except as otherwise provided in subtitle A, the entire amount of gain or loss, determined under § 1001, on the sale or exchange of property shall be recognized.

Section 1.1001-1(a) of the Income Tax Regulations provides that the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent, is treated as income or loss sustained.

Cottage Savings Ass'n v. Commissioner, 499 U.S. 554 (1991), concerns the issue of when a sale or exchange has taken place that results in realization of gain or loss under § 1001. In Cottage Savings, a financial institution exchanged its interests in one group of residential mortgage loans for another lender's interests in a different group of residential mortgage loans. The two groups of mortgages were considered "substantially identical" by the agency that regulated the financial institution.

The Supreme Court of the United States in Cottage Savings, 499 U.S. at 560-61, concluded that § 1.1001-1 reasonably interprets § 1001(a) and stated that an exchange of property gives rise to a realization event under § 1001(a) if the properties exchanged are "materially different." In defining what constitutes a "material difference" for purposes of § 1001(a), the Court stated that properties are "different" in the sense that is "material" to the Code so long as their respective possessors enjoy legal entitlements that are different in kind or extent. Cottage Savings, 499 U.S. at 564-65. The Court held that mortgage loans made to different obligors and secured by different homes did embody distinct legal entitlements, and that the taxpayer realized losses when it exchanged interests in the loans. Cottage Savings, 499 U.S. at 566.

Each Plan will continue to hold the same beneficial interest in each asset of the merging trusts and surviving trust as it held before the mergers. The aggregate fair market value of each Plan's beneficial interest in the merged trust will equal the fair market value of the Plan's beneficial interest in the merged and surviving Trusts before the mergers. The benefits and beneficial interests of each Plan beneficiary will remain the same before and after the mergers. Accordingly, the proposed Trust mergers will not result in a material difference in kind or extent of the legal entitlements, and no gain

or loss is realized on the Trust mergers for purposes of § 1001(a) by X, Y, Z, the Trusts, the Plans, or any beneficiary of the Plans.

RULING 2

Section 1015(b) provides that if property is acquired by a transfer in trust (other than a transfer in trust by a gift, bequest, or devise), the basis shall be the same as it would be in the hands of the grantor increased in the amount of gain or decreased in the amount of loss recognized to the grantor on such transfer.

Section 1.1015-2(a)(1) provides that in the case of property acquired after December 31, 1920, by transfer in trust (other than by transfer in trust by gift, bequest, or devise) the basis of property so acquired is the same as it would be in the hands of the grantor increased by the amount of gain or decreased in the amount of loss recognized to the grantor on the transfer under the law applicable to the year in which the transfer was made. If the taxpayer acquired the property by transfer in trust, this basis applies whether the property be in the hands of the trustee, or the beneficiary, and whether acquired prior to termination of the trust and distribution of the property, or thereafter.

Section 1223(2) provides that, in determining the period for which the taxpayer has held property however acquired, there shall be included the period for which such property was held by any other person, if under Chapter 1 of Subtitle A such property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as it would have in the hands of such other person. See also § 1.1223-1(b).

Based solely on the facts and representations submitted, we conclude that because § 1001 does not apply to the proposed Trust mergers, under § 1015, the tax basis that the surviving Trusts have in the assets of the merging Trusts immediately after the mergers will be the same as the tax basis of the merging Trusts in such assets immediately before the mergers. The tax basis of the historic assets of the surviving Trusts immediately after the mergers will be the same as the tax basis that the surviving Trusts had in those assets immediately before the mergers. We further conclude that each asset transferred by the merging Trusts to the surviving Trusts will have the same holding period in the hands of the surviving Trusts immediately after the mergers that it had in the hands of the merging Trusts immediately before the mergers. Each historic asset of the surviving Trusts will have the same holding period immediately after the mergers that it had immediately before the mergers.

We additionally conclude that in each merger, the surviving Trust will succeed to and take into account any net operating loss carry forward (NOLCF), net capital loss, and other tax attribute of the merging Trust. Each asset transferred by the merging Trust to the surviving Trust will have the same tax attributes immediately after the merger that it had immediately before the merger. Each historic asset of the surviving

Trust will have the same tax attributes immediately after the merger that it had immediately before the merger. All NOLCFs, net capital losses, and other tax attributes of the merging and surviving Trusts immediately before the mergers will survive and remain available to the surviving Trusts after the mergers and no limitation will be imposed as a result of the proposed mergers on the surviving Trusts' use of such tax attributes.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code.

This ruling is directed only to the taxpayer that requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file, a copy of this letter is being sent to X's authorized representative.

Sincerely,

J. THOMAS HINES
Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes