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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 409.00-00
4975.00-00

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T:EP:RA:T3

LEGEND:

Company A =

Company B =

Company C =

Company D =

Company E =

Company F =

Company G =

Plan A =

Plan B =

Plan C =

Plan D =

Plan E =

Plan F =

Plan G =

Plan H =

Dear :

This is in response to a request for a private letter ruling dated September 8, 2006, as revised by letters dated January 31, 2007, February 8, 2007, March 1, 2007 and March 31, 2007, submitted on your behalf by your authorized representatives regarding the tax consequences of the spin-off of a subsidiary by the parent corporation sponsoring the Company B plans. Your authorized representatives have submitted the following facts and representations in connection with this request.

Company A, based in and incorporated in , is a holding company and the parent of an affiliated group of corporations that files a consolidated federal income tax return. Company B is a corporation newly formed by Company A in connection with the Company B Spin-Off.

On September 25, 2006, Company A received a favorable ruling from the IRS that the Company B Spin-Off will be tax-free to Company A and its shareholders under sections 355 and other sections of the Internal Revenue Code ("Code").

Prior to the Company B Spin-Off, Company A directly owned all of the outstanding stock of Company C. Company A also directly owned 95.24% of the outstanding stock of Company D, the other 4.76% of which was owned directly by Company C. Company D directly owned all of the outstanding stock of Company E. Company E directly owned all of the outstanding stock of Company F.

Company A formed Company B as a wholly-owned subsidiary. In connection with such formation, Company A received all of the shares of Company B common stock in exchange for a nominal cash contribution. Company E distributed to Company D all of its assets other than Company F. Company D distributed all of the outstanding stock of Company E to Company A in exchange for a portion of Company A's stock of Company D of approximately equivalent value. Company A contributed all of the outstanding stock of Company E and any other assets associated with the to Company B in exchange for (1) additional shares of Company B Common Stock, (2) an amount of cash not to exceed Company A's adjusted basis in the assets transferred to Company B by Company A, reduced by the amount of any liabilities assumed by Company B (within the meaning of Section 357(d)) and (3) the "Controlled Securities." The "Controlled Securities" that Company A received in exchange for the outstanding shares of Company E included debt securities with a total face amount of approximately $8.8 billion in the form of senior unsecured notes and a senior secured term loan.

Five of Company A's plans were involved in the spin-off: Plan A which includes both a profit-sharing plan and an ESOP; Plan B which includes both a stock bonus plan and an ESOP; Plan C which includes both a stock bonus plan and an ESOP (This plan does not currently maintain a suspense account because the loan for the ESOP has been repaid); Plan D which includes a profit sharing plan and an ESOP; and Plan E which includes a profit sharing plan and an ESOP. Collectively the Company A Plans.

On or about November 1, 2006 (before the Company B Spin-Off and while Company B remains in the controlled group of corporations that includes Company A), Company A spun off a portion of Plan A, Plan B, and Plan C so that the employee benefit obligations and assets of these plans related to the active, former, and retired Company A employees assigned to Company B were transferred to new plans that will be sponsored by Company B (the "Company A Plan Spin-Off"). The new Company B Plans are Plan F, Plan G, and Plan H or collectively the Company B Plans. Company B did not establish a plan that is identical to Plan D or Plan E because no participants in Plan D or Plan E have been employed by Company B.

Each Company B Plan is substantially identical in all material respects to its respective Company A Plan and will include an ESOP and PAYSOP component, as applicable. All liabilities relating to and participant accounts of Company B participants were transferred from the Company A Plans to the Company B Plans on November 20, 2006. However, no portion of the ESOP suspense account in Plan A was transferred to Plan F.

Although the Company B Plans will hold Company A shares as a result of the Company A Plan Spin-Off, participants may not be permitted to acquire any additional Company A shares since the Company A Plan Spin-Off. In addition, any employer stock contributions made to the Company B Plans before the Company B Spin-Off were made in the form of Company A shares.

In the Company B Spin-Off, Company A distributed the Company B common stock it owned to its stockholders on a pro rata basis. As a result, on November 20, 2006, each of the Company A Plans and the Company B Plans possessed both Company A shares and Company B shares. The trustees of the Company B Plans and the Company A Plans have not engaged in share exchanges so that the Company A Plans can reinvest in Company A shares and the Company B Plans can reinvest in Company B shares.

Assuming that no exchanges occur, the trustees of the Company B Plans and trustee of the Company A Plans will dispose of shares of the other company's stock in open market transactions following the Company B Spin-Off as follows:

- The Company A Plans will reinvest any Company B shares received with respect to PAYSOP shares within 90 days of the Company B Spin-Off. This transaction has occurred.
- The Company B Plans are currently maintaining a Company A shares fund. Participants holding shares in this fund are permitted to sell their shares at any time, but are not permitted to purchase any additional shares. The Company B Plans' trustees will determine whether, upon reasonable notice, participants who do not sell their Company B shares within a certain period of time following the Company B Spin-Off will be deemed to have elected to sell their Company A shares and to invest the proceeds of such sale in the Company B shares fund.

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

1. To Company B: That the Commissioner of the Service shall extend the 90-day reinvestment period under section 1.46-8(e)(10) of the Income Tax Regulations ("Regulations") pursuant to his authority under section 1.46-8(e)(10) of the Regulations so that the sale of the Company A Shares by the Company B Plans following the Spin-off, and the reinvestment of the proceeds of such sale in, or the receipt in such exchanges of, Company B Shares, may take place over a period commencing on the date of the Spin-off and ending on the date that is 365 calendar days following such date ("Reinvestment Period"), without resulting in the failure of the Company B Plans to satisfy the requirement of Code sections 409(a)(2) and 4975(e)(7)(A) that the Company B Plans be designed to invest primarily in employer securities and that there will be no imposition of a penalty under Section 1.46-8(h) of the Regulations.

2. To Company B: During the Reinvestment Period, distributions by the Company B Plans of Company A shares received as a result of the Company A Plan Spin-Off will constitute distributions of employer securities in satisfaction of the requirements of Section 409(h)(1)(A).

3. To Company A: Company B shares that the Company A Plans acquire as a result of the Company B Spin-Off will be treated as "securities of the employer corporation" for purposes of excluding net unrealized appreciation from a distributee's gross income under Section 402(e)(4).

4. To Company B: The Company A shares acquired by the Company B Plans pursuant to the Company A Plan Spin-Off will be treated as "securities of the employer corporation" for purposes of excluding net unrealized appreciation from a distributee's gross income under Section 402(e)(4).

5. To Company A: For purposes of determining net unrealized appreciation under Section 402(e), the basis of the Company A and Company B shares held by the Company A Plans will be determined by allocating the basis in the Company A shares immediately before the Company B Spin-Off between the Company A shares and the Company B shares immediately after the Company B Spin-Off in accordance with the rules under Section 358, given that the IRS has ruled that the Company B Spin-Off is tax-free under Section 355.

6. To Company B: For purposes of determining net unrealized appreciation under Section 402(e), the basis of the Company A and Company B shares held by the Company B Plans will be determined by allocating the basis in the Company A shares immediately before the Company B Spin-Off between the Company A shares and the Company B shares immediately after the Company B Spin-Off in accordance with the rules under Section 358, give that the IRS has ruled that the Company B Spin-Off is tax-free under Section 355.

7. To Company A: The (1) disposition of Company B shares received pursuant to the Company B Spin-Off by the Company A Plans and the purchase of Company A shares with the proceeds from any such disposition within 90 days of the disposition or (2) receipt of Company A shares through the exchange of such Company B shares will cause the determination of net unrealized appreciation of such Company A shares to be made without regard to such receipt, disposition, and purchase.

8. To Company B: Pursuant to the authority granted by Section 402(j)(2) to extend the 90-day period for reinvesting in employer securities for purposes of Section 402(e)(4), (1) the disposition of Company A shares received pursuant to the Company B Spin-Off by the Company B Plans and the purchase of Company B shares with the proceeds from any such disposition or (2) the receipt of Company B shares in exchange for Company A shares may take place over the Reinvestment Period, so that the determination of net unrealized appreciation of such Company B shares will be made without regard to such receipt, disposition, and purchase.

9. To Company A: If the Company A Plans exchange Company B shares for Company A shares or dispose of Company B shares and reinvest the proceeds in Company A shares within 90 days of the disposition of the Company B shares, the Company A Plans' basis in such Company A shares for purposes of determining the net unrealized appreciation on such shares will be equal to the basis of the Company B shares determined under Ruling 5, above.

10. To Company B: If the Company B Plans exchange Company A shares for Company B shares or dispose of Company A shares and reinvest the proceeds in Company B shares within the Reinvestment Period, the Company B Plans' basis in such Company B shares for purposes of determining the net unrealized

appreciation on such shares will be equal to the basis of the Company A shares determined under Ruling 6, above.

11. To Company A: For 90 days after the Company B Spin-Off, the number of Company B shares held in suspense will be taken into consideration when calculating the number of shares to be released from suspense under Section 4975, and any Company B shares that are required to be released may be converted to an equivalent number of Company A shares at the time of release based on the fair market value of the Company A and Company B shares at the time of the release.

12. To Company A: If Plan A disposes of the Company B shares received with respect to the unallocated Company B shares held in the LESOP suspense account and reinvests the proceeds in Company A shares, such Company A shares will be deemed to have been acquired with the proceeds of the exempt loan for the LESOP. Accordingly, dividends paid on such Company A shares and used to repay the exempt loan for the LESOP will be treated as "applicable dividends" under Section 404(k)(2)(A)(iv) and will be deductible by Company A under Section 404(k) to the same extent that the dividends were deductible by Company A with respect to the original LESOP Company A shares that created a right to the Company B shares as a result of the Company B Spin-Off.

With respect to ruling request 1, section 409(a)(2) of the Code provides that a tax credit employee stock ownership plan, including a payroll-based tax credit employee stock ownership plan ("PAYSOP"), is a defined contribution plan which is designed to invest primarily in employer securities as defined in section 409(l) of the Code.

Section 4975(e)(7) of the Code requires that an ESOP be designed to invest primarily in qualifying employer securities as defined in section 409(l).

Section 1.46-8(e)(10) of the Regulations provides that the requirement that a PAYSOP be designed to invest primarily in employer securities is a continuing obligation. Therefore, a transaction changing the status of a corporation as an employer may require the conversion of certain plan assets into other securities.

Section 1.46-8(e)(10) of the Regulations also provides that cash or other assets derived from the disposition of employer securities held by a tax credit employee stock ownership plan must be reinvested in employer securities not later than the 90th day following the date of disposition. However, the Commissioner may grant an extension of the period for reinvestment in employer securities depending on the facts and circumstances of each case. Due to the facts and circumstances we have determined that in addition to the PAYSOP portion, it is appropriate to also apply section 1.46-8(e)(10) of the Regulations to the ESOP portion of the Plans.

Your authorized representatives have submitted two analyses prepared by themselves and Company G which establishes expected daily trading volumes for Company B by comparing certain financial data with that of a number of other companies with similar market capitalizations. Based on this analysis and the number of shares to be bought and sold, Company G has recommended that 365 calendar days be allowed for the sale of Company A stock and reinvestment into Company B stock to avoid disrupting the market. The analyses show that the increase in daily trading volume to complete the transaction within the 90-day reinvestment period would have a significant adverse affect on the value of the Company B shares.

Taking into consideration all of the facts and circumstances of this case and the two above described analyses, we conclude with respect to ruling request 1, that the sale of Company A shares by the Company B Plans following the Spin-off, and the reinvestment of the proceeds of such sale in Company B shares, may take place over a period commencing on the date of the Spin-off and ending on the date that is 273 calendar days following such date (the "Extended Reinvestment Period"), without resulting in the failure of the Company B Plans' ESOP portion to satisfy the requirement of Code section 4975(e)(7) that the Company B Plans be designed to invest primarily in employer securities. In addition, reinvestment during the Extended Reinvestment Period will not cause the PAYSOP portion of the Plans to violate section 409(a)(2) of the Code. Also, there will be no imposition of a penalty under Section 1.46-8(h) of the Regulations.

With respect to ruling request 2, section 409(h)(1) of the Code provides that a participant in a ESOP or PAYSOP must have a right to demand that his benefit be distributed in the form of employer securities (as defined in section 409(l)). As discussed above, to the extent the Spin-off resulted in the Company B Plans holding non-employer securities, reinvestment in Company B Shares is required within 90 days following the date of receipt or such longer period of time allowed by the Commissioner based on the facts and circumstances. We ruled in ruling request 1 that this reinvestment may take place within the Extended Reinvestment Period. However, when a participant becomes entitled to a distribution under the Company B Plan during the Extended Reinvestment Period, the distribution of any non-employer securities (derived from ownership of employer securities) held in a participant's account during this period is considered a distribution of employer securities that satisfies the requirements of section 409(h).

Accordingly, we conclude with respect to ruling request 2 that, following the Spin-off, distributions during the Extended Reinvestment Period to the Company B Plans' participants of Company A shares allocated to their accounts will constitute distributions of employer securities in satisfaction of the requirement under section 409(h)(1)(A) of the Code.

With respect to ruling request 3 and 4, section 402(e)(4)(E) provides generally that the term "securities of the employer corporation" includes securities of a parent or subsidiary corporation (as defined in section 424(e) and (f)) of the employer corporation.

Section 1.402(a)-1(b)(2)(i) of the Regulations provides that the amount of net unrealized appreciation in securities of the employer corporation which are distributed by the trust is the excess of the market value of such securities at the time of distribution over the cost or other basis of such securities to the trust. Section 1.402(a)-1(b)(2)(ii) of the Regulations sets forth the manner in which the cost or other basis to the trust of a distributed security of the employer corporation is calculated for the purpose of determining the net unrealized appreciation on such security.

In Revenue Ruling 73-29, 1973-1 C.B. 198, securities of an employer corporation held by its qualified plan were transferred to the qualified trust of an unrelated corporation when the first employer sold part of its business and transferred some of its employees to an unrelated corporation. It was held that shares of stock of the seller corporation distributed from the buyer's qualified trust to employees of the buyer corporation who are former employees of the seller corporation are securities of the employer corporation and will always be securities of the employer corporation even after those shares and the employees in whose accounts they were held were transferred to an unrelated corporation.

In the present case, Company B was a wholly-owned indirect subsidiary of Company A. Therefore, prior to the Spin-off, Company B stock constitutes securities of the employer corporation within the meaning of section 402(e)(4)(E) of the Code. Pursuant to and simultaneously with the Company B Spin-off, Company B ceased to be a subsidiary of, or otherwise be a member of the same controlled group as, Company A. Therefore, after the Company B Spin-off, Company A shares do not constitute employer securities in relation to the Company B Plans and Company B shares do not constitute employer securities in relation to the Company A Plans.

Accordingly, with respect to ruling request 3 and 4, we conclude that the shares of Company A acquired by the Company B Plans and shares of Company B acquired by the Company A Plans as a result of the Spin-off will be treated as "securities of the employer corporation" for purposes of excluding net unrealized appreciation from income under section 402(e) of the Code.

With respect to ruling requests 5 and 6, according to the above facts, Company A has received a ruling that the Spin-off of Company B is tax-free under section 355 of the Code. Section 1.358-2(a)(2) of the Regulations provides that if, as a result of a transaction under section 355, a shareholder who owned stock of only one class before the transaction owns stock of two or more classes after the

transaction, then the basis of all the stock held before the transaction is allocated among the stock of all classes held immediately after the transaction in proportion to the fair market values of the stock of each class.

Accordingly, we conclude with respect to ruling request 5 that for purposes of determining net unrealized appreciation under section 402(e) of the Code, the basis of the Company A and Company B shares held by the Company A Plans will be determined by allocating the basis in the Company A shares immediately before the Spin-off between the Company A shares and Company B shares immediately after the Spin-off in accordance with the rules under section 358 of the Code, because the Spin-off is tax-free under section 355 of the Code.

With respect to ruling requests 6 we conclude that for purposes of determining net unrealized appreciation under section 402(e) of the Code, the basis of the Company B and Company A shares held by the Company B Plans will be determined by allocating the basis in the Company B shares immediately before the Spin-off between the Company B shares and Company A shares immediately after the Spin-off in accordance with the rules under section 358 of the Code, because the Spin-off is tax-free under section 355 of the Code.

With respect to ruling request 7 and 9 , section 402(j) of the Code provides, in pertinent part, that for purposes of section 402(e)(4), in the case of any transaction in which either (A) the plan trustee exchanges the plan's securities of the employer corporation for other such securities, or (B) the plan trustee disposes of securities of the employer corporation and uses the proceeds of such disposition to acquire securities of the employer corporation within 90 days (or such longer period as the Secretary may prescribe), the determination of net unrealized appreciation shall be made without regard to such transaction.

In the present case, we have already ruled that Company B shares held by Company A Plans as a result of the Spin-off are securities of the employer corporation as defined in section 402(e)(4)(E) of the Code for purposes of section 402. The disposition by the Company A Plans of Company B shares followed by the reinvestment of the proceeds in Company A stock is thus a disposition of securities of the employer corporation followed by a reinvestment of the proceeds in securities of the employer corporation. In accordance with section 402(j), if such reinvestment occurs within 90 days (or such longer period as the Secretary may prescribe), the transaction is ignored for purposes of determining net unrealized appreciation with respect to those securities.

Accordingly, we conclude with respect to ruling request 7 that the disposition of Company B shares received pursuant to the Company B Spin-off by the Company A Plans and the purchase of Company A shares with the proceeds from any such disposition within 90-days of the disposition or receipt of Company A shares through the exchange of such Company B shares will cause the determination of net unrealized appreciation of such Company A shares to be

made without regard to such receipt, disposition, and purchase. With respect to ruling request 9, to the extent that the Company A Plans dispose of the shares of Company B and reinvests the proceeds in shares of Company A within the Reinvestment Period, the basis of the replacement shares of Company A for purposes of determining net unrealized appreciation under section 402(e) of the Code will be equal to the basis of the shares of Company B determined in the manner described in ruling request 5 above.

With respect to ruling requests 8 and 10, we have already ruled that Company A shares held by Company B Plans as a result of the Spin-off are securities of the employer corporation as defined in section 402(e)(4)(E) of the Code for purposes of section 402. The disposition by the Company B Plans of Company A shares followed by the reinvestment of the proceeds in Company B stock is thus a disposition of securities of the employer corporation followed by a reinvestment of the proceeds in securities of the employer corporation. In accordance with section 402(j) of the Code, if such reinvestment occurs within 90 days (or such longer period as the Secretary may prescribe), the transaction is ignored for purposes of determining net unrealized appreciation with respect to those securities.

We previously concluded with respect to ruling request 1 that the 90-day reinvestment period of section 1.46-8(e)(10) of the Regulations is extended to a total of 273 calendar days for the Company B Plans. For the same reasons set forth in our response to that ruling request, we conclude that the 90-day reinvestment period described in section 402(j) is also extended to a total of 273 calendar days from the date of the Spin-off for the Company B Plans.

Accordingly, we conclude with respect to ruling request 8 that the disposition of Company A shares received pursuant to the Company B Spin-off by the Company B Plans and the purchase of Company B shares with the proceeds from any such disposition within the Extended Reinvestment Period or receipt of Company B shares through the exchange of such Company A shares will cause the determination of net unrealized appreciation of such Company B shares to be made without regard to such receipt, disposition, and purchase. With respect to ruling request 10, to the extent that the Company B Plans dispose of the shares of Company A and reinvests the proceeds in shares of Company B within the Extended Reinvestment Period, the basis of the replacement shares of Company B for purposes of determining net unrealized appreciation under section 402(e) of the Code will be equal to the basis of the shares of Company A determined in the manner described in ruling request 6 above.

With respect to ruling request 11, section 54.4975-7(b)(8) of the Regulations provides generally that an exempt loan for an ESOP must provide for the release from encumbrance of plan assets used as collateral for the loan. It further provides that for each plan year during the duration of the loan, the number of securities released must equal the number of encumbered securities held

immediately before release for the current plan year multiplied by a fraction, the numerator of which is the amount of principal and interest paid for the year and the denominator of which is the sum of the numerator plus the principal and interest to be paid for all future years. Finally, section 54.4975-7(b)(8) provides that if collateral for the loan includes more than one class of securities, the number of securities of each class to be released for a plan year must be determined by applying the same fraction to each class.

Section 54.4975-11(c) of the Regulations provides that all assets acquired with the proceeds of an exempt loan under section 4975(d)(3) of the Code must be held in the suspense account and withdrawn as if encumbered.

In the present case, the Company B stock received by the Company A Plans in the Spin-off is received as a result of the Company A Plan's ownership of Company A stock which was acquired with the proceeds of the exempt loan, for purposes of section 54.4975-11(c) of the Regulations, the Company B stock is treated as if it was also acquired with the proceeds of the exempt loan. Accordingly, the Company B stock is taken into account in determining the number of shares to be released, in accordance with section 54.4975-7(b)(8) of the Regulations by applying the fraction to them separately. However, in place of the release of Company B stock an equivalent amount of Company A stock should be released, based on the fair market values of both Company A stock and Company B stock.

Accordingly, we conclude with respect to ruling request 11 that for 90-days after the spin-off the number of shares of Company B held in the suspense account will be taken into consideration when calculating the number of shares to be released from suspense under section 4975 of the Code, and may then be converted to an equivalent number of shares of Company A for release from suspense based on the fair market value of the shares of Company B and shares of Company A.

With respect to ruling request 12, section 404(k) of the Code generally permits a corporation to deduct the amount of any applicable dividend paid in cash by the corporation during the taxable year with respect to employer securities which are held on the record date for such dividend by an ESOP which is maintained by the corporation paying the dividend or any other member of the same controlled group. Section 404(k)(2)(A)(iv) defines the term "applicable dividend" to include any dividend which, in accordance with plan provisions, is used to make payments on an exempt loan the proceeds of which were used to acquire the employer securities (whether or not allocated to participants) with respect to which the dividend is paid. Section 404(k)(2)(B) provides that a dividend described in section 404(k)(2)(A)(iv), paid with respect to employer securities allocated to a participant, is an applicable dividend only if the plan provides that employer securities with a fair market value of at least the amount of the dividend are allocated to the participant.

Section 404(k)(6)(A) of the Code provides that the term employer securities has the same meaning given such term by section 409(l). Under section 409(l) of the Code, the term "employer securities" generally means common stock issued by the employer (or by a corporation which is a member of the same controlled group) which is readily tradable on an established securities market.

In this case, the Company B shares were acquired by the Company A Plans pursuant to the Spin-off as the direct result of the Company A Plans' ownership of the original Company A stock which was acquired with the proceeds of the exempt loan. The Company B shares held by the Company A Plans after the Spin-off will represent part of the value of the original Company A shares held prior to the Spin-off and acquired with the proceeds of the exempt loan. Since the Company B shares represent part of the assets acquired with the proceeds of the exempt loan, if the Company A Plans dispose of the Company B shares and reinvest the proceeds in Company A shares within a reasonable period of time, we believe that the replacement Company A shares should be treated as assets acquired with the proceeds of the exempt loan.

Accordingly, we conclude with respect to ruling request 12 that, to the extent that the Company A Plans dispose of the shares of Company B received pursuant to the Spin-off and reinvests the proceeds in shares of Company A, dividends paid on such shares of Company A which are used to repay the Exempt Loans will be treated as "applicable dividends" under Code section 404(k)(2)(A)(iv) and will be deductible by Company A under section 404(k) to the same extent that dividends paid with respect to the original Company A shares purchased with proceeds of the Exempt Loans were deductible by Company A.

This ruling letter is based on the assumption that the Company A Plans and Company B Plans are qualified under section 401(a) of the Code and meets the requirements of section 4975(e)(7), and that its related trust is tax exempt under section 501(a) at all relevant times.

This ruling letter is also based on the assumption that the TRASOP and PAYSOP shares have been maintained in a manner consistent with the applicable provisions of the Code and regulations.

This ruling letter is directed solely to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

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

If you wish to inquire about this ruling, please contact (ID) at ( )
Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

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Form 437

cc: