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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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DEC - 2 2010

Uniform Issue List: 402.00-00

T:EP:RA:T3

LEGEND:

Company M =

Subsidiary N =

Plan X =

Plan Y =

Master Trust X =

Master Trust Y =

Dear

This is in response to correspondence dated June 12, 2006, as supplemented by correspondence dated March 19, 2009, October 2, 2009, and December 29, 2009 submitted on your behalf by your authorized representatives, concerning the taxability of certain transfers from Plan X and Plan Y.

The following facts and representations have been made on your behalf:

Company M is the parent organization which owns 100 percent of the stock of its subsidiary, Subsidiary N. Company M is located in the United States and Subsidiary N is located in . Both Company M and Subsidiary N are organized in the United States.

Subsidiary N maintains two retirement plans (Plans) covering its employees and employees of subsidiaries and affiliates that adopt the Plans who are residents of . The Plans are Plan X, a defined contribution plan which contains a cash or deferred arrangement as described in section 401(k) of the Internal Revenue Code (Code), and Plan Y, a defined benefit plan. Plan X and Plan Y have been determined to be qualified plans as described in section 401(a) of the Code and have been determined to be qualified and exempt from taxation under section 1165 of the Internal Revenue Code (PR Code).

Plan X is funded through a subaccount under the Company M Master Savings Plan Trust Agreement, which established Master Trust X. Plan Y is funded through a subaccount under the Company M Master Retirement Plan Trust Agreement, which established Master Trust Y. The Master Trusts are intended to be exempt from tax as organizations described in section 501(a) of the Code. Additionally, it has been represented on your behalf that Master Trust X and Master Trust Y satisfy all of the requirements of Revenue Ruling 81-100, 1981-1 C.B. 326.

The use of the subaccounts under Master Trust X and Master Trust Y allows assets of Plans X and Y to be commingled with assets of other plans maintained by entities within the same controlled group for investment purposes. However, each Master Trust Agreement requires the trustee to account separately for the assets and liabilities of each participating plan and to allow benefits under the plan to be paid only from the assets held in the Master Trust that are allocable to that plan.

All services giving rise to contributions to Plans X and Y are and have been performed in . Currently, distributions from the Plans to participants and beneficiaries are divided into two components: the portion attributable to employee and employer contributions to the Plans and the portion attributable to earnings and accretions with respect to employee and employer contributions.

In order to simplify the administration of and compliance for Plans X and Y, Company M and Subsidiary N intend to create two new plans, PR Plan X and PR Plan Y (PR Plans), that are substantially identical to Plans X and Y, respectively. PR Plans X and Y are intended to be tax-qualified under section 1165 of the PR Code but not under section 401(a) of the Code. Company M and Subsidiary N will also create new trusts for the PR Plans in , PR Plan X Trust for PR Plan X, and PR Plan Y Trust for PR Plan Y. Company M and Subsidiary N intend to transfer (Proposed Transfer) all of the assets and liabilities of Plans X and Y to the respective PR Plan, either PR Plan X or PR Plan Y. The assets of Plan X, all of which are invested in Master Trust X, will be transferred to the PR Plan X Trust, and the assets of Plan Y, all of which are invested in Master Trust Y, will be transferred to the PR Plan Y Trust. The assets of Plan X and Plan Y consist principally of each Plan's beneficial interest in the subaccount under the respective Master Trust. The PR Plan X Trust and the PR Plan Y Trust will be created and organized under the laws of and will be classified as a "foreign trust" as defined in section 7701(a)(31)(B) of the Code. After the transfer is completed, Company M and Subsidiary N intend to terminate Plans X and Y.

Your authorized representatives have asserted on your behalf that Subsidiary N will establish PR Plans X and Y no later than 12 months following the date of receipt of a favorable letter ruling from the Service.

PR Plans X and Y will cover solely bona fide residents of and persons who perform labor or services primarily within . In addition, all participants in the PR Plans will be, at all relevant times, bona fide residents of who do not have tax homes outside of , or closer connections to the United States or a foreign country other than .

Subsidiary N will submit the PR Plans X and Y documents to the Puerto Rico Treasury Department (Departamento de Hacienda) for rulings that such PR Plans qualify under section 1165 of the PR Code. Upon receipt of such rulings, the PR Plans' Trusts will be exempt from taxation under the PR Code.

With respect to PR Plans X and Y, no election will be made under section 1022(i)(2) of the Employee Retirement Income Security Act of 1974 (ERISA) to be treated as a trust created or organized in the United States for purposes of section 401(a) of the Code. Nevertheless, the PR Plans will continue to be covered under Title I of ERISA. The PR Plans will contain terms protecting the termination rights, including partial termination, of PR Plan participants under section 411(d)(3) of the Code.

Your authorized representatives have asserted on your behalf that PR Plans X and Y and their related trusts, PR Plan X Trust and PR Plan Y Trust, will satisfy the requirements of section 1022(i)(1) of ERISA.

Further, your authorized representatives have asserted on your behalf that at no time during the transfer of assets from Master Trust X to the PR Plan X Trust or from Master Trust Y to the PR Plan Y Trust will any assets of Plan X, PR Plan X, Plan Y, or PR Plan Y be made available to the participants of such Plans or come within the control of such participants, except upon a distribution of benefits in accordance with the terms of PR Plan X or PR Plan Y, respectively. They have also asserted that the transfer of assets from Plan X and Master Trust X to PR Plan X and the PR Plan X Trust, and from Plan Y and Master Trust Y to PR Plan Y and the PR Plan Y Trust, will satisfy the applicable requirements of section 414(l) of the Code.

Based upon the facts and representations stated above, the following rulings are requested:

1. For purposes of section 501(a) of the Code, the PR Plan X Trust and the PR Plan Y Trust will be treated as organizations described in section 401(a) of the Code following the transfer of assets from Plan X to PR Plan X and from Plan Y to PR Plan Y, respectively, provided that PR Plan X and PR Plan Y are exempt from income tax under the laws of .

2. The transfer of assets from Plan X to PR Plan X, and from Plan Y to PR Plan Y, will satisfy the requirements of section 414(l) of the Code.

3. The transfer of assets from Plan X to PR Plan X and the transfer of assets from Plan Y to PR Plan Y will not be treated as distributions from the transferor plans to affected participants for purposes of sections 72, 401(k), and 402 of the Code.

4. The transfer of assets from Plan X and Plan Y will not result in the partial termination of those Plans.

5. To the extent that they are otherwise deductible, an employer's contributions to PR Plans X and Y will be deductible under section 404(a)(1) and (3), subject to the limits in that section, in the taxable year of the employer when they are paid to the Trusts for the PR Plans.

6. The assets of PR Plan X, held initially in the PR Plan X Trust, may be invested in and held as a part of Master Trust X; the assets of PR Plan Y, held initially in the PR Plan Y Trust, may be invested in and held as a part of Master Trust Y; and such investments by the PR Plan X Trust and the PR Plan Y Trust will not adversely affect the exempt status of either Master Trust under section 501(a) of the Code.

7. The portion of a distribution from PR Plan X or PR Plan Y to a participant who is a bona fide resident of that is attributable to any employer or employee contributions (excluding earnings and after-tax contributions) constitutes income derived from sources within for purposes of section 933 of the Code (whether they accrued before or after the transfer).

8. The portion of a distribution from PR Plan X or PR Plan Y to a participant who is a bona fide resident of that is attributable to earnings on and accretions to any employer or employee contributions constitutes income derived from sources within for purposes of section 933 of the Code (whether they accrued before or after the transfer).

9. No portion of a distribution from PR Plan X or PR Plan Y to a participant who is a bona fide resident of will be subject to withholding under section 3405 of the Code.

10. No information return on either Form 1099-R or any other form will be required to be filed with the Internal Revenue Service, and no related statement will be required to be furnished to any participant who is a bona fide resident of in connection with any distribution from PR Plan X or PR Plan Y pursuant to section 6041, 6041A, or 6047 of the Code.

Section 401(a) of the Code provides that a trust created or organized in the United States and forming a part of a stock bonus, pension, or profit-sharing plan that satisfies the requirements set forth in section 401(a) constitutes a qualified trust.

Section 501(a) of the Code provides, in relevant part, that an organization described in Code section 401(a) shall be exempt from taxation. Section 1022(i)(1) of ERISA provides that, for purposes of section 501(a), any trust forming part of a pension, profit-sharing, or stock bonus plan, all the participants of which are residents of , shall be treated as an organization described in section 401(a) if such trust both forms part of a pension, profit-sharing, or stock bonus plan and is exempt from income tax under the laws of .

Section 1.501(a)-1(e) of the Income Tax Regulations (Regulations) provides, in pertinent part, that the practical effect of section 1022(i)(1) of ERISA is to exempt those trusts (described therein) from United States income tax on the income from their United States investments. For purposes of section 1022(i)(1) of ERISA, the term "residents of ' means bona fide residents of and persons who perform labor or services primarily within , regardless of residence for other purposes, and the term "participants" is restricted to current employees who are not excluded under the eligibility provisions of the plan.

PR Plan X will be a defined contribution plan and PR Plan Y will be a defined benefit plan. PR Plans X and Y will be submitted to the Treasury Department for a determination that they are exempt from income tax under the laws of . It is intended that the PR Plans will receive Determination Letters to that effect. In addition, participation in PR Plans X and Y will be limited to employees residing in . Thus, the representations made indicate compliance with the rules and requirements listed above.

Therefore, with respect to ruling request one, we conclude that for purposes of section 501(a) of the Code, the Trusts which form a part of PR Plan X and PR Plan Y will be treated as organizations described in section 401(a) of the Code following the transfer of account balances from Plan X to PR Plan X, and accrued benefits from Plan Y to PR Plan Y, provided that PR Plans X and Y are exempt from income tax under the laws of .

Section 414(l)(1) of the Code provides that a trust which forms a part of a plan shall not constitute a qualified trust under section 401 and a plan shall be treated as not described in section 403(a) unless in the case of any merger or consolidation of the plan with, or in the case of any transfer of assets or liabilities of such plan to, any other trust plan after September 2, 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated).

Section 1.401(a)-50 of the Regulations provides that certain plans created or organized in whose administrators have made the election referred to in section 1022(i)(2) of ERISA are to be treated as trusts created or organized in the United States for purposes of section 401(a) of the Code.

Section 1.414(l)-1(b)(3) of the Regulations provides that a "transfer of assets or liabilities" occurs when there is a diminution of assets or liabilities with respect to one plan and the acquisition of these assets or the assumption of these liabilities by another plan.

Section 1.414(l)-1(d) of the Regulations provides that in the case of a merger of two or more defined contribution plans, the requirements of section 414(l) of the Code will be satisfied if all of the following conditions are met:

(1) The sum of the account balances in each plan equals the fair market value (determined as of the date of the merger) of the assets of the plan as merged.

(2) The assets of each plan are combined to form the assets of the plan as merged.

(3) Immediately after the merger, each participant in the plan as merged has an account balance equal to the sum of the account balances the participant had in the plans immediately prior to the merger.

Section 1.414(l)-1(e) of the Regulations provides the general rules for the merger of defined benefit plans as follows: Section 414(l) of the Code compares the benefits on a termination basis before and after the merger. If the sum of the assets of all plans is not less than the sum of the present values of the accrued benefit (whether or not vested) of all plans, the requirements of section 414(l) will be satisfied merely by combining the assets and preserving each participant's accrued benefits. This is so because all the accrued benefits of the plans merged are provided on a termination basis by the plan as merged. However, if the sum of the assets of all plans is less than the sum of the present values of the accrued benefits (whether or not vested) in all plans, the accrued benefits in the plan as merged are not provided on a termination basis.

Section 1.414(l)-1(m) of the Regulations provides that in the case of a spinoff of a defined contribution plan, the requirements of section 414(l) of the Code will be satisfied if after the spinoff–

(1) the sum of the account balances for each of the participants in the resulting plans equals the account balance of the participant in the plan before the spinoff, and

(2) the assets in each of the plans immediately after the spinoff equal the sum of the account balances for all participants in that plan.

Section 1.414(l)-1(n) of the Regulations provides that in the case of a spinoff of a defined benefit plan, the requirements of section 414(l) of the Code will be satisfied if–

(1) all of the accrued benefits of each participant are allocated to only one of the spun off plans, and

(2) the value of the assets allocated to each of the spun off plans is not less than the sum of the present value of the benefits on a termination basis in the plan before the spinoff for all participants in that spun off plan.

Section 1.414(l)-1(o) of the Regulations provides that any transfer of assets or liabilities will for purposes of section 414(l) of the Code be considered as a combination of separate mergers and spinoffs using the rules of paragraphs (d), (e) through (j), (l), (m), or (n) of this section, whichever is appropriate.

Section 1022(i)(1) of ERISA provides that for purposes of section 501(a) of the Code, any trust forming part of a pension, profit-sharing, or stock bonus plan, all of the participants of which are residents of , shall be treated as an organization described in section 401(a) if such trust forms part of a pension, profit-sharing, or stock bonus plan and is exempt from income tax under the laws of .

Section 1022(i)(2)(A) of ERISA provides that if the administrator of a pension, profit-sharing, or stock bonus plan which is created or organized in elects, at such time and in such manner as the Secretary of the Treasury may require, to have the provisions of and amendments made by Title II of this Act apply, for plan years beginning after the date of election, any trust forming a part of such plan shall be treated as a trust created or organized in the United States for purposes of section 401(a) of the Code.

Section 401(a)(12) of the Code provides that a trust is not qualified under section 401(a) unless the plan of which such trust is a part provides that, in the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan, each participant in the plan would (if the plan them terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he or she would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). Section 414(l) requires a plan to satisfy the minimum benefit requirement and also provides rules for how plan assets must be allocated. Regulations under section 414(l) treat a transfer of assets and liabilities from one plan to another as a combination of events that is fundamentally the same as a spinoff of a plan from the transferor plan followed by a merger of the spun off plan with the transferee plan. Thus, in the case of a plan that results from the merger of two plans, a transferee plan is a continuation of the transferor plan with regard to transferred assets and liabilities.

With respect to your second ruling request, the transfer of the participants' account balances from Plan X to PR Plan X, and accrued benefits from Plan Y to PR Plan Y, is a transfer of assets and liabilities where there is a diminution of assets and liabilities with respect to one plan and the acquisition and assumption of such assets and liabilities by another plan. Thus, the Proposed Transfer is a transfer of assets and liabilities within the meaning of section 1.414(l)-1(b)(3) of the Regulations.

Section 1.414(l)-1(o) of the Regulations provides that the Proposed Transfer must be considered for the purposes of section 414(l) of the Code, as a spinoff, satisfying the requirements of section 1.414(l)-1(m) for defined contribution plans, from Plan X followed by a merger, satisfying the requirements of section 1.414(l)-1(d) for defined contribution plans, of such spun off plan with PR Plan X; and as a spinoff, satisfying the requirements of section 1.414(l)-1(n) for defined benefit plans, from Plan Y followed by a merger, satisfying the requirements of section 1.414(l)-1(e) for defined benefit plans, of such spun off plan with PR Plan Y. In effect, these Regulations require that immediately after the Proposed Transfer, the account balances of each of the participants in PR Plan X must be equal to the sum of the account balances each such participant had in Plan X immediately before the Proposed Transfer, and that the value of the accrued benefits of each of the participants in PR Plan Y is not less than the sum of the present value of the benefits on a termination basis each such participant had in Plan Y immediately before the Proposed Transfer. In the current instance, this would be the case after the Proposed Transfer.

It has been represented that the administrators of PR Plan X and PR Plan Y have not and do not intend to make the election to be treated as a trust created or organized in the United States for purposes of Code section 401(a). However, it is represented that PR Plans X and Y will be covered under Title I of ERISA. In addition, PR Plans X and Y will contain language protecting the section 411(d)(3) partial termination rights of the PR Plan participants.

Section 414(l) of the Code is concerned with the rights of the participant upon plan termination, both before and after the transfer of assets and liabilities. In the case of any transfer of assets from a plan qualified under section 401(a) of the Code to any other plan, each participant must be entitled to receive a benefit and associated rights upon plan termination immediately after the transfer equal to the benefit and associated rights he or she would have been entitled to receive immediately before the transfer. In the current instance, each Plan X or Plan Y participant would have an account balance or accrued benefits immediately after the Proposed Transfer equal to his or her account balance or accrued benefits immediately before the Proposed Transfer. In addition, the PR Plan participants, either through ERISA Title I coverage or PR Plan language, would have all associated rights upon PR Plan X or PR Plan Y termination immediately after the Proposed Transfer equal to their associated rights immediately before the Proposed Transfer. Thus, in our view, the benefits immediately after the Proposed Transfer are equal to the benefits immediately before the Proposed Transfer, and the transfer of the participants' account balances from Plan X to PR Plan X, and accrued benefits from Plan Y to PR Plan Y, satisfies section 414(l) of the Code.

Therefore, with respect to your second ruling request, we conclude that the transfer of assets from Plan X to PR Plan X, and from Plan Y to PR Plan Y, will satisfy the requirements of section 414(l) of the Code.

With respect to your third ruling request, section 402(a) of the Code provides, in relevant part, that any amount actually distributed to any distributee by a qualified trust shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72.

Section 72(a) of the Code provides that gross income includes any amount received as an annuity.

Section 72(d)(1) of the Code sets forth special rules applicable to amounts received as annuities from qualified employer retirement plans.

Section 72(e) of the Code provides rules governing the taxation of amounts not received as annuities. In relevant part, section 72(e) governs distributions from qualified retirement plans.

Section 401(k) of the Code sets forth rules applicable to qualified cash or deferred arrangements. Section 401(k)(2)(B)(i) provides, in relevant part, that a qualified cash or deferred arrangement which is part of a profit-sharing plan under which amounts held by its related trust which are attributable to employer contributions made pursuant to the employee's election may not be distributable to participants or other beneficiaries earlier than (1) separation from service, death, or disability; (2) an event described in section 401(k)(10); (3) the attainment of age 59 ½; or (4) upon financial hardship of the employee.

Revenue Ruling 67-213, 1967-2 C.B. 149, holds that where the interests of participants are transferred from a trust forming part of one qualified plan to a trust forming part of another qualified plan, no amounts will be considered distributed or made available to the participants by reason of their transfer.

Under Code section 402(a), a participant's interest in a trust forming part of a qualified plan is includible in income in the taxable year in which it is distributed from the trust. Thus, in general, the transfer of amounts held in the trust of a plan qualified within the meaning of section 401(a) to the trust of a plan not qualified under section 401(a) will give rise to a taxable distribution.

However, under Rev. Rul. 67-213, a transfer of the participant's interest from one qualified trust to a trust forming part of another qualified plan would not be a distribution of that interest. A similar conclusion would be reached if one qualified plan is merged into another such plan.

Revenue Ruling 2008-40, 2008-30 I.R.B. 166 provides that the transfer of amounts from a trust under a plan qualified under section 401(a) of the Code to a nonqualified foreign trust is treated as a distribution from the transferor plan. Specifically, the ruling holds that a transfer of assets and liabilities from a plan qualified under section 401(a) to a plan that satisfied section 1165(a) of the PR Code and was described in section 1022(i)(1) of ERISA is treated as a distribution from the transferor plan. Any such distribution would result in disqualification of the transferor plan if the distribution failed to satisfy the applicable qualification requirements. Further, a transfer from a qualified plan to a plan that made an election under section 1022(i)(2) was not treated as a distribution from the transferor plan because a plan that made such an election was treated as a qualified plan for purposes of section 401(a).

Rev. Rul. 2008-40 provides transition relief regarding transfers to plans under section 1022(i)(1) of ERISA. With regard to a transfer from a qualified plan to a plan described in section 1022(i)(1) that would satisfy the requirements of section 414(l) of the Code but for the fact that the transferee trust is not a qualified trust within the meaning of section 401(a), the holdings in Rev. Rul. 2008-40 are not effective for the transfer if the date of transfer is before January 1, 2011. In the case of a transfer to a section 1022(i)(1) plan with respect to which the holdings in the revenue ruling are not effective under the preceding sentence, the transfer is not treated as a distribution from the transferor plan and the transfer will not be treated as causing the transferor plan to fail to satisfy the requirements of section 401(a) solely on account of the holdings in this revenue ruling.

In this case, the substance of the proposed transaction is that the account balances and accrued benefits held in the related trusts of plans which are qualified under section 401(a) of the Code will be transferred to nonqualified plans, the trusts of which are deemed qualified pursuant to section 1022(i)(1) of ERISA for purposes of exemption under Code section 501(a). In addition, the transition relief provided under Rev. Rul. 2008-40 provides that a transfer from a qualified plan to a plan described in section 1022(i)(1) that would satisfy the requirements of section 414(l) of the Code but for the fact that the transferee trust is not a qualified trust within the meaning of section 401(a), is not treated as a distribution from the transferor plan and the transfer will not be treated as causing the transferor plan to fail to satisfy the requirements of section 401(a).

Therefore, with respect to your third ruling request, we conclude that neither the transfer of assets from Plan X to PR Plan X, nor the transfer of assets from Plan Y to PR Plan Y, will be considered a distribution from the transferor plan to affected Puerto Rico participants for purposes of sections 72, 401(k), and 402 of the Code, as long as the date of transfer is before January 1, 2011.

Section 1.401-6(b) of the Regulations provides that whether a plan is terminated is generally a question to be determined with regard to all the facts and circumstances in a particular case. A plan is not terminated, for example, merely because an employer consolidates or replaces a plan with a comparable plan.

Section 8.01 of Revenue Procedure 2009-4, 2009-1 I.R.B. 118 provides that the Service will not issue a letter ruling in certain areas because of the factual nature of the problem involved or because of other reasons. The Service may decline to issue a letter ruling when appropriate in the interest of sound tax administration or on other grounds whenever warranted by the facts or circumstances of a particular case.

With respect to your ruling request four, we are unable to provide a response since the issue involved is primarily one of fact.

Pursuant to a letter dated October , 20 , you have withdrawn your fifth ruling request.

Pursuant to a letter dated December ; 20 , you have withdrawn your sixth ruling request.

With respect to your seventh and eighth ruling requests, section 933(1) of the Code provides that, in the case of an individual who is a bona fide resident of during the entire taxable year, as determined under section 937(a) and the regulations thereunder, income derived from sources within (except amounts received from services performed as an employee of the United States or any agency thereof) is excluded from gross income and is exempt from tax under subtitle A of the Code, except that the individual is not allowed as a deduction from gross income any deductions (other than the deduction under section 151, relating to personal exemptions) or any credit properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

Section 937(b)(1) provides that rules similar to the rules for determining whether income is income from sources within and without the United States generally apply for purposes of determining whether income is from sources within and without a possession. Treas. Reg. § 1.937-2(b).

Code sections 861 through 864 contain rules for sourcing income for services performed within and without the United States, but those sections contain no specific provision regarding the source of income from pensions.

Section 861(a)(3) of the Code provides that compensation for labor or personal services performed within the United States shall be treated as income from sources within the United States, and section 862(a)(3) provides that compensation for labor or personal services performed without the United States shall be treated as income from sources without the United States. Section 863(b) and Treasury Regulation 1.861-4(b)(1)(i) provide that when labor or services are performed partly within and partly without the United States, the distribution shall be apportioned between amounts treated as partly derived from sources within and partly derived from sources without the United States.

Revenue Ruling 79-388, 1979-2 C.B. 270, provides rules for determining the source of distributions from a private employer's qualified pension plan that is located in the United States and pays benefits to a retired nonresident alien individual who earned the right to the payments by performing services both within and without the United States. The revenue ruling provides that such pension distributions must be allocated between United States and foreign source income as follows: (i) the portion of each distribution attributable to employer contributions with respect to services performed within the United States is income from United States sources; (ii) the portion of each distribution attributable to employer contributions with respect to services performed without the United States is income from foreign sources; and (iii) the portion of each distribution attributable to earnings on or accretions to employer contributions is income from United States sources.

The Court of Federal Claims upheld the Rev. Rul. 79-388 rule for sourcing the earnings and accretions portion of a distribution from a United States plan in Clayton v. United States, 33 Fed. Cl. 628 (1995), aff'd without published opinion, 91 F.3d 170 (Fed. Cir.), cert. denied, 519 U.S. 1040 (1996).

Rev. Rul. 2008-40 also provides transition relief with respect to the application of section 933 to distributions from transferee plans described in section 1022(i)(1) of ERISA. The relief provides that for purposes of section 933, the portion of each distribution from a section 1022(i)(1) transferee plan that is attributable to amounts that were transferred from a qualified plan before January 1, 2011, will be treated as income from sources within .

With specific respect to your seventh ruling request, it has been represented that all of the employee and employer contributions credited to the account of any participant under the pre-merger Plans X and Y, and under PR Plans X and Y, relate to services performed entirely in . Accordingly, with respect to ruling request seven, we conclude that, pursuant to Rev. Rul. 79-388 and Rev. Rul. 2008-40, the portion of a distribution from PR Plan X or PR Plan Y to a participant who is a bona fide resident of that is attributable to any employer or employee contributions credited under PR Plan X or PR Plan Y (excluding earnings and accretions) will be income from sources within for purposes of section 933 of the Code. Employer and employee contributions made after the Proposed Transfer from Plan X Trust and Plan Y Trust to PR Plan X Trust and PR Plan Y Trust will be from sources within for purposes of section 933 as long as the services continue to be performed entirely within .

With specific respect to your eighth ruling request, we conclude that pursuant to the transition relief provided in Rev. Rul. 2008-40, as long as the transfer from Plan X Trust and Plan Y Trust to PR Plan X Trust and PR Plan Y Trust is made prior to January 1, 2011, the portion of a distribution from PR Plan X or PR Plan Y to a participant who is a bona fide resident of that is attributable to earnings on and accretions to any employer or employee contributions that accrued before the transfer, constitutes income derived from sources within for purposes of section 933 of the Code. The earnings and accretions earned after the Proposed Transfer will be from sources within Puerto Rico as long as the situs of the PR Plan X Trust and PR Plan Y Trust remain in .

With respect to your ninth ruling request, Code section 3405 generally provides that the payor of a designated distribution shall withhold from such payment a stated portion of such distribution. In the case where such designated distribution is a periodic payment or a nonperiodic payment (other than an eligible rollover distribution), the distributee may election out of such withholding. Code section 3405(e)(13) provides, in effect, that such election is available for any periodic or nonperiodic distribution which is to be delivered within any possession of the United States. However, in the case of any designated distribution which is an eligible rollover distribution, no such election is available, and the payor of such distribution shall withhold an amount equal to 20 percent of such distribution (unless the distributee elects to have the distribution directly rolled over to an eligible retirement plan). (See Code section 3405(c) and section 35.3405(c)-1 Q&A-1(a) and Q&A-2 of the Regulations.)

Code section 3405(e)(10) and section 35.3405-1T, Qs&As D-1 through D-34 of the Temporary Employment Tax Regulations, sets forth various rules relating to the requirements and election procedures regarding elections out of withholding with which the payor must comply for periodic and nonperiodic payments as well as designated distributions generally.

Code section 3405(e)(1)(A)(i) defines a "designated distribution" as any payment or distribution from or under an employer deferred compensation plan, an individual retirement plan, or a commercial annuity. Under section 3405(e)(1)(B)(ii), the term "designated distribution" does not include the portion of a distribution or payment which it is reasonable to believe is not includible in gross income. (See section 35.3405-1T, Q&A-2 of the Temporary Employment Tax Regulations.)

Pursuant to the transition relief provided under Rev. Rul. 2008-40, for purposes of section 933, the portion of each distribution from a section 1022(i)(1) transferee plan that is attributable to amounts that were transferred from a qualified plan before January 1, 2011, will be treated as income from sources within . As a result, for purposes of the Code, such portion is not included in gross income and is exempt from taxation. Furthermore, based on the analyses discussed above with respect to ruling requests seven and eight, no amount of any distribution to a participant from PR Plans X and Y will be includible in gross income by reason of the application of section 933 of the Code, provided that services continue to be performed entirely in and the situs of the PR Plan X Trust and the PR Plan Y Trust remain in .

Therefore, with respect to your ninth ruling request, we conclude that no portion of a distribution from PR Plan X or PR Plan Y to a participant who is a bona fide resident of will be subject to withholding under section 3405 of the Code, provided that: (1) the transfers from Plan X and Plan Y occur before January 1, 2011, (2) services continue to be performed entirely in Puerto Rico, and (3) the situs of the PR Plan X Trust and the PR Plan Y Trust remain in .

With respect to your tenth ruling request, section 6041(a) of the Code provides, in relevant part, that all persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable gains, profits, and income...of $600 or more in any taxable year...shall render a true and accurate return to the Secretary, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary.

Code section 6041(d) provides, in relevant part, that every person required to make a return under subsection (a) shall furnish to each person with respect to whom such return is required a written statement showing the name, address, and phone number of the information contact of the person required to make such return, and the aggregate amount of payments to the person required to be shown on the return.

Code section 6041A(a) provides, in relevant part, that if any service-recipient engaged in a trade or business pays in the course of such trade or business during any calendar year remuneration to any person for services performed by such person, and the aggregate of such remuneration paid to such person is $600 or more, then the service-recipient shall make a return, according to the forms or regulations prescribed by the Secretary.

Section 1.6041-2(b)(1) of the Regulations provides, in relevant part, that amounts which are distributed or made available to a beneficiary and to which Code section 402 (relating to employees' trusts) or section 403 (relating to employee annuity plans) applies shall be reported on Forms 1096 and 1099 to the extent such amounts are includible in the gross income of such beneficiary if the amounts so includible aggregate $600 or more in any calendar year.

Section 1.6041-1(a)(2) of the Regulations provides, in relevant part, that where a Form 1099 is required to be filed, a separate Form 1099 shall be furnished for each applicable person to whom payments are made.

Code section 6047(d) provides, in relevant part, that the Secretary shall, by forms or regulations, require that the employer maintaining a plan from which designated distributions (as defined in section 3405(e)(1)) may be made, make returns and reports regarding such plan to the Secretary and to the participants and beneficiaries of such plan. Furthermore, no return or report may be required under the preceding sentence with respect to distributions to any person during any year unless such distributions aggregate $10 or more.

Section 35.3405-1T of the Temporary Employment Tax Regulations, Q&A E-8 provides that compliance with the reporting requirements of section 6047(d) is required whenever there is a designated distribution to which Code section 3405 applies. Therefore, the "old law rule that distributions of less than $600 per year do not require reporting" no longer applies. Section 35.3405-1T of these regulations, Q&A E-9, provides that the reporting requirements will be satisfied if Form 1099 is filed with respect to each payee in the absence of other forms or regulations.

With respect to your tenth ruling request, this letter ruling has concluded in its response to your seventh ruling request that the portion of a distribution from PR Plans X or Y to a participant that is attributable to any employer or employee contributions credited under the pre-merger Plan X or Plan Y (excluding earnings and any employee after-tax contributions) will be income from sources within for purposes of Code section 933. In response to your eighth ruling request, this letter ruling has concluded that the earnings and accretions portion of a distribution under PR Plans X or Y to a participant who performed services only in will be sourced solely within . In response to your ninth ruling request, this letter ruling has concluded that no portion of a distribution from PR Plan X or PR Plan Y made to a bona fide resident will be subject to the withholding rules of Code section 3405.

Therefore, with respect to your tenth ruling request, we conclude that no information return on either Form 1099-R or any other form will be required to be filed with the Internal Revenue Service, and no related statement will be required to be furnished to any participant who is a bona fide resident of in connection with any distribution from PR Plan X or PR Plan Y pursuant to section 6041, 6041A, or 6047 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 regulations which may be applicable thereto. In particular, no opinion is expressed or implied concerning whether the recipients of distributions from PR Plans X or Y are bona fide residents of for purposes of section 933.

This letter assumes that Plans X and Y are and were qualified under section 401, and their related trusts are and were exempt from tax under section 501(a) at all times relevant thereto.

This letter 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 as precedent.

Pursuant to a power of attorney on file with this office, copies of this ruling letter are being sent to your authorized representatives. If you wish to inquire about this ruling, please contact XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX Please address all correspondence to SE:T:EP:RA:T3.

Sincerely,

Frances V Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of letter ruling
Notice of Intention to Disclose