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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

U.I.L. 4980-00-00

AUG 02 2011

T:EP:RA:T3

Legend:

Company A =

Company B =

Company C =

Company D =

Plan X =

Dear :

This is in response to the letter dated November 25, 2009, as supplemented by correspondence dated August 24, 2009, and May 9, 2011, submitted on your behalf by your authorized representative, in which you request a ruling that the assets in Plan X with its suspense account may be retained within the Company A controlled group after the sale of Company B, whose wholly owned subsidiary, Company C is the sponsor of Plan X, and that plan sponsorship may be transferred to another member of the Company A controlled group whose employees participate in Plan X.

The following facts and representations have been submitted under penalties of perjury in support of your request.

Company A is contemplating selling its wholly owned subsidiary, Company B, including its subsidiaries Company C and Company D to an entity outside the Company A controlled group. Plan X is maintained by Company C. Plan X

maintains a qualified replacement plan suspense account (Suspense Account) under Internal Revenue Code (Code) section 4980. At the time of the ruling request Plan X covered 173 employees of Company C and Company D and 451 employees of other members of the Company A controlled group. The Suspense Account was created with excess assets of a defined benefit plan sponsored by Company C that was terminated in 2009. Currently the Suspense Account is used to fund non-elective employer contributions for participants in Plan X. The Suspense Account is scheduled to fund such contributions over a maximum seven-year period. As of October 31, 2009, the Suspense Account was valued at $2,723,626.44. An allocation of $1,262,464.30 was made from the suspense account in 2010 as the 2009 non-elective contributions under Plan X. Employer contributions of $1,532,154.80 were made from the Suspense account for the 2010 plan year.

Presently a total of 80 participants would be impacted by the sale of Company B. This would leave 260 participants who previously participated in Plan X who would continue to participate in Plan X after the contemplated sale. This change in the number of participants is due to attrition.

Company A has stipulated that Plan X is a qualified replacement plan within the meaning of Code section 4980(d) and that currently at least 95 percent of the active participants in the terminated defined benefit plan who remain employees within the Company A controlled group remain as active participants in Plan X.

Company A further stipulates that after the sale of Company B at least 95 percent of those participants who participated in the terminated defined benefit plan and who remain active employees of the Company A controlled group after the sale will remain active participants in Plan X until the earlier of such time as (1) they terminate employment with a member of the Company A controlled group or (2) the suspense account is exhausted.

Based upon the facts and representations, Company A requests a ruling that the assets in Plan X, with its suspense account, may be retained within the Company A controlled group after the sale of Company B, the Plan sponsor. Plan sponsorship will be changed to either Company A or one of its retained subsidiaries at the time of the sale of Company B.

Section 4980(a) of the Code provides for a 20 percent excise tax on the amount of any reversion from a qualified plan. Section 4980(d)(1) provides, in pertinent part, that the excise tax under section 4980 shall be increased to 50 percent with respect to an employer reversion from a qualified plan unless the employer either establishes or maintains a "qualified replacement plan", or the plan provides for certain benefit increases which take effect on the termination date.

Section 4980(c)(2) of the Code generally defines the term "employer reversion" as the amount of cash and fair market value of other property received (directly

or indirectly) by the employer from the qualified plan.

Section 4980 (d)(2) of the Code provides that a "qualified replacement plan" is a qualified plan established or maintained by the employer in connection with a qualified plan termination, which satisfies the participation, asset transfer and allocation requirements of sections 4980(d)(2)(A),(B) and (C).

Section 4980(d)(2)(A) requires that at least 95 percent of the active participants in the terminated plan who remain as employees of the employer after the termination be active participants in the replacement plan.

Section 4980(d)(2)(B) of the Code requires that a direct transfer from the terminated plan to the replacement plan be made before any employer reversion, and that the transfer be an amount equal to the excess (if any) of (i) 25 percent of the maximum amount which the employer could receive as an employer reversion without regard to section 4980(d), over (ii) the amount equal to the present value of the aggregate increases in the accrued benefits under the terminated plan of any participants or beneficiaries pursuant to a plan amendment adopted during the 60-day period ending on the date of termination of the qualified plan, and which takes effect immediately on the termination date.

Section 4980(d)(2)(B)(iii) of the Code provides that in the case of the transfer of any amount under section 4980(d)(2)(B)(i) from a terminated plan, such amount in not includible in the gross income of the employer, no deduction is allowable with respect to such transfer, and the transfer is not treated as an employer reversion for purposes of section 4980.

Section 4980(d)(2)(C)(i) of the Code provides that, if the replacement plan is a defined contribution plan, the amount transferred to the replacement plan must be (I) allocated under the plan to the accounts of participants in the plan year in which the transfer occurs, or (II) credited to a suspense account and allocated from such account to accounts of participants no less rapidly than ratably over the seven-plan-year period beginning with the year of the transfer.

Section 4980(d)(2)(C)(ii) of the Code provides that if, by reason of any limitation under section 415, any amount credited to a suspense account under section 4980(d)(2)(C)(i)(II) may not be allocated to a participant before the close of the seven-plan-year period, such amount shall be allocated to the accounts of other participants, and if any portion of such amount may not be allocated to other participants by reason of such limitation, it shall be allocated to the participant as provided in section 415.

Section 4980(d)(2)(C)(iii) of the Code provides that any income on any amount credited to a suspense account under the clause (i)(II) shall be allocated to accounts of participants no less rapidly than ratably over the remainder of the period determined under such clause (after application of clause (ii)).

Section 4980 (d)(2)(C)(iv) of the Code provides that if any amount credited to a suspense account under clause (i)(II) is not allocated as of the termination date of the replacement plan, (I) such amount shall be allocated to the accounts of the participants as of such date, except that any amount which may not be allocated by reason of any limitation under section 415 shall be allocated to the accounts of other participants, and (II) if any portion of such amount may not be allocated to other participants under subclause (I) by reason of such limitation, such portion shall be treated as an employer reversion to which this section applies.

Based on the representations and stipulations of Company A, we find that Plan X will continue to be a "qualified replacement plan" within the meaning of Code section 4980(d)(2), because it continues to meet the requirements of that Code section. Specifically, Plan X will continue to cover 95 percent of the active participants in the previously terminated defined benefit plan who remain employed by the Company A controlled group after the sale of Company B and the suspense amount will continue to be allocated no less rapidly than ratably over the seven-plan-year period beginning with the year of the original transfer from the terminated defined benefit plan.

Accordingly, we rule that the retention of Plan X with its suspense account, within the Company A controlled group after the sale of Company B will not affect the status of Plan X as a qualified replacement plan.

This ruling letter is based on the assumption That Plan X is qualified under section 401(a) of the Code and that its related trust is tax-exempt under section 501(a) of the Code at all times relevant to this ruling.

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.

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

If you have any questions regarding this letter, please contact , ID # at .

Sincerely yours,

Lam B. Washam

Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice 437

cc