TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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Company A	=	***
Company B	=	***
Company C	=	***
Plan X	=	***
Plan Y	=	***
State M	=	***
Date 1	=	***

Dear *** :

This letter is in response to a request for a letter ruling dated September 3, 2010, as supplemented by correspondence dated December 22, 2010, November 7, 2011, December 16, 2011, and December 21, 2011 submitted on behalf of Company A, by its authorized representatives, regarding the federal tax treatment under section 402(e) of the Internal Revenue Code ("Code") of shares of common stock of Company B that were acquired by Plan X pursuant to a series of corporate transactions under Code sections 351, 355 and 368.

The following facts and representations have been submitted under penalty of perjury in support of the rulings requested:

Company B, a State M corporation, established Plan Y effective Date 1, for the benefit of its employees and the employees of its participating subsidiaries. Plan Y is a calendar year defined contribution plan intended to qualify under Code section 401(a). It also includes a cash or deferred arrangement as described in Code section 401(k) and provides for employer matching contributions and participant after-tax contributions. Plan Y participants are permitted to direct the investment of assets credited to their accounts in accordance with section 404(c) of the Employee Retirement Income Security Act of 1974 ("ERISA"). Among the investment funds available to Plan Y participants is the Company B Stock Fund, which is a stock bonus plan and a non-leveraged employee stock ownership plan ("ESOP") as described in Code section 4975(e)(7). Participants may elect to receive payment of their accounts in a lump sum or periodic withdrawals. Certain participants may also elect to receive payment of their accounts in installments over a period that does not exceed their life expectancy.

Company C and Company A are wholly owned subsidiaries of Company B that were each created in anticipation of the corporate reorganization of Company B. During 2010, Company B contributed and transferred to Company C certain assets, and Company C assumed from Company B certain liabilities, in a transaction under Code section 351. Soon thereafter, Company B contributed the stock of Company C to Company A. During the first quarter of 2011, Company B spun-off Company A by distributing a certain number of Company A shares to each shareholder of Company B in a corporate reorganization under Code sections 355 and 368 (the "Spin-Off"). Your authorized representative has represented that Company B has received the opinion of its tax advisor that this reorganization satisfies the requirements of Code sections 355 and 368.

Following the Spin-Off, Company A and Company B will no longer be part of the same controlled group of corporations within the meaning of Code sections 414(b), (c), (m) or (o).

Company A established Plan X effective January 1, 2011 for the benefit of its employees. Plan X is a calendar year defined contribution plan intended to qualify under Code section 401(a) and includes a cash or deferred arrangement as described in code section 401(k). Plan X contains terms that are similar to Plan Y. Participants may elect to receive payment of their accounts in a lump sum or periodic withdrawals. Plan X does not include an ESOP portion.

On July 31, 2010, approximately 40% of Company B's workforce became employees of Company A. These employees continued to participate in Plan Y until Plan X was established on January 1, 2011, at which time they became participants in Plan X. Shortly thereafter, their account balances were transferred from Plan Y to Plan X in a trustee-to-trustee transfer that complies with Code section 414(l). As a result of the Spin-Off and this trustee-to-trustee transfer, Plan X holds Company A shares and Company B shares in the

Company A and Company B Stock Funds, respectively. The Company A Stock Fund consists of Company A shares that are readily tradable within the meaning of section 1.401(a)(35)-1(f)(5)(ii) of the Income Tax Regulations ("Regulations").

Participants in Plan X will be permitted to direct the investment of assets credited to their accounts, however they will not be permitted to invest any new contributions or existing account balances in the Company A or Company B Stock Funds. Instead, participants in Plan X will have until December 31, 2011 to voluntarily dispose of shares of Company A and Company B and reinvest the proceeds in other investments pursuant to the terms of Plan X. Any assets that remain in the Company A and Company B Stock Funds on December 31, 2011 will be liquidated by the trustee of Plan X, and the proceeds thereof reinvested in the Plan X balanced fund.

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

1. The Company B shares transferred to Plan X in the trustee-to-trustee transfer in connection with the Spin-Off will be "securities of the corporation" for purposes of Code section 402(e)(4) and Revenue Ruling 73-29, 1973-1 C.B. 198, and the net unrealized appreciation in such shares may be excluded from gross income upon distribution by Plan X to a participant or beneficiary on or before December 31, 2011, to the extent provided in Code section 402(e)(4).

2. The reinvestment restrictions placed on the Company A and Company B shares in Plan X during 2011 do not cause Plan X to violate Code section 401(a)(35).

With respect to ruling request 1:

Code section 402(e)(4)(B) states, in pertinent part that, for purposes of sections 402(a) and 72, in the case of any lump sum distribution which includes securities of the employer corporation, there shall be excluded from gross income the net unrealized appreciation attributable to that part of the distribution which consists of securities of the employer corporation.

Code section 402(e)(4)(A) states, in pertinent part that, for purposes of sections 402(a) and 72, in the case of a distribution other than a lump sum distribution, the amount actually distributed to any distributee from a trust described in section 402(a) shall not include any net unrealized appreciation in securities of the employer corporation attributable to amounts contributed by the employee.

Code section 402(e)(4)(E)(ii) provides in pertinent part that, for purposes of section 402(e), the term "securities of the employer corporation" includes

securities of a parent or subsidiary corporation (as defined in subsections (e) and (f) of Code section 424) 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 that 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.

Under section 1.402(a)-1(d)(2) of the Regulations neither employee salary deferrals made pursuant to a cash or deferred arrangement nor matching contributions are treated as employee contributions for purposes of Code section 402(e)(4).

Section 1.402(a)-1(b)(3) of the Regulations sets forth certain special rules for determining the net unrealized appreciation on securities of the employer corporation that are attributable to employee contributions.

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 Revenue Ruling 80-138, 1980-1 C.B. 87, the Service held that the transfer of employer securities from an exempt trust maintained by a parent corporation and its subsidiary to a newly established exempt trust of the subsidiary will not change the basis of the securities for purposes of computing net unrealized appreciation in the securities because the transfer is not a taxable event.

With respect to ruling request 1, the transfer of Company B shares in the Plan Y accounts of Company A employees to Plan X is analogous to the situation described in Revenue Ruling 73-29. Accordingly, with respect to ruling request 1, we conclude that the shares of Company B transferred to Plan X will be treated as "securities of the employer corporation" for purposes of Code section 402(e)(4) and Revenue Ruling 73-29, and the net unrealized appreciation in such

shares may be excluded from gross income upon distribution to a participant or beneficiary on or before December 31, 2011, to the extent provided in Code section 402(e)(4).

With respect to ruling request 2,

Code section 401(a)(35) provides that a trust which is a part of an applicable defined contribution plan is not a qualified trust under Code section 401(a) unless the plan satisfies the diversification requirements of Code section 401(a)(35)(B), (C), and (D).

Code section 401(a)(35)(E)(i) provides in pertinent part that an applicable defined contribution plan is a defined contribution plan that holds any publicly traded employer security.

Code section 401(a)(35)(G)(iii) provides that the term "employer security" has the meaning given by section 407(d)(1) of the ERISA.

Code section 401(a)(35)(G)(v) provides that the term "publicly traded employer securities" means employer securities which are readily tradable on an established securities market.

Section 1.401(a)(35)-1(f)(5)(ii) of the Regulations provides in pertinent part that a security is "readily tradable on an established securities market " if the security is traded on a national securities exchange that is registered under Section 6 of the Securities Exchange Act.

Code section 401(a)(35)(D)(ii)(II) provides that a plan is not permitted to impose restrictions or conditions with respect the investment of employer securities that are not imposed on the investment of other assets of the plan.

Section 1.401(a)(35)(e) of the Regulations provides in pertinent part that a plan violates Code section 401(a)(35) if it imposes a direct or indirect restriction or condition with respect to the investment of employer securities that are not imposed on other assets of the plan.

Section 1.401(a)(35)(e)(1)(ii)(B) of the Regulations provides in pertinent part that an indirect restriction exists, for example, if the plan provides that a participant who divests his or her account balance with respect to the investment in employer securities is not permitted for a period of time thereafter to reinvest in employer securities.

Section 1.401(a)(35)(e)(2)(vii)(A) of the Regulations provides in pertinent part, an exception from the divestment restrictions for frozen funds. The section provides that a plan is not treated as imposing an indirect restriction merely because it

provides that an employee that divests an investment in employer securities is not permitted to reinvest in employer securities, but only if the plan does not permit additional contributions or other investments to be invested in employer securities.

Section 1.401(a)(35)-1(g)(2) provides that Section 1.401(a)(35)-1 of the Regulations is effective for plan years beginning on or after January 1, 2011.

ERISA section 407(d)(1) defines the term "employer security" as a security issued by an employer of employees covered by the plan or by an affiliate of such employer.

ERISA section 407(d)(7) provides that a corporation is an affiliate of an employer if it is a member of a controlled group of corporations (determined by applying Code section 1563(a), except substituting 50 percent for 80 percent) of which the employer is a member.

The Company A shares held by Plan X are employer securities within the meaning of ERISA section 407(d)(1). The shares are also publicly traded within the meaning of Code section 401(a)(35)(E). Therefore, Plan X is an "applicable defined contribution plan" subject to the requirements of Code section 401(a)(35).

Following the Spin-Off, Company B ceased to be the employer of the participants covered under Plan X. In addition, the Taxpayer has represented that Company A and Company B are not affiliated employers within the meaning of ERISA section 407(d)(7). Accordingly, Company B shares in Plan X are not investments in employer securities subject to the diversification requirements of Code Section 401(a)(35). Therefore, the reinvestment restriction on these shares following their divestment by participants, to reinvest the proceeds in Company B shares, does not cause Plan X to violate Code section 401(a)(35).

In addition, the Company A Stock Fund in Plan X is a frozen fund within the meaning of Section 1.401(a)(35)(e)(2)(vii)(A). Therefore, the restriction on Company A shares following their divestment by participants, to reinvest the proceeds in Company A shares, is not treated as an indirect restriction on Code section 401(a)(35) diversification rights.

This ruling letter is based on the assumption that Plan X and Plan Y are qualified under Code section 401(a) at all times relevant to the transactions described herein. This ruling letter is also based on the assumption that the corporate reorganization described herein meets the requirements of Code sections 355 and 368.

Ruling 2, as it relates to ERISA section 407(d), was coordinated with the U.S. Department of Labor.

Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the transaction described above under any other provision of the Internal Revenue Code or of Title I of ERISA.

This ruling 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.

If you have any questions about this letter, please contact *** at ***. Please refer to *** .

Sincerely yours,

Jason Levine acting for Donzell Littlejohn

Donzell H. Littlejohn
Manager Employee Plans
Technical Group 2

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