Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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Date:
September 08, 2015

Legend:

Taxpayer A =
Company B =
Company C =
Plan X =
Year A =
Year B =

Dear :

This letter responds to your request dated December 30, 2014, as supplemented by correspondence dated June 12, 2015, submitted on your behalf by your authorized representative regarding a determination described in section 3.04 of Revenue Procedure 93-41, 1993-2 C.B. 536 (Rev. Proc. 93-41), that Taxpayer A satisfies the administrative scrutiny requirement to be treated as a separate line of business within the meaning of section 414(r) of the Internal Revenue Code (Code).

Section 414(r) generally provides that an employer is treated as operating qualified separate lines of business during any year if the employer operates separate lines of business for bona fide business reasons and satisfies certain other conditions under the Code. If the employer is treated as operating qualified separate lines of business for the year, the employer may apply the minimum coverage requirements of Code section 410(b) (including the nondiscrimination requirements of section 401(a)(4)) and the minimum participation requirements of section 401(a)(26) separately with respect to employees of each qualified separate line of business.

Section 414(r)(2) provides that each separate line of business must meet certain statutory requirements to be considered a qualified separate line of business. Section 414(r)(2)(A) requires that a line of business must have at least 50 employees who are

not excluded under section 414(q)(8). Section 414(r)(2)(B) provides that the employer must notify the Secretary that such line of business is being treated as separate. Section 414(r)(2)(C) provides that either such line of business must meet the administrative scrutiny guidelines prescribed by the Secretary or the employer must receive a determination from the Secretary that such line of business may be treated as meeting administrative scrutiny.

Section 1.414(r)-1 of the Income Tax Regulations provides that an employer is treated as operating qualified separate lines of business only if: (1) the employer designates its lines of business by reference to the property or services provided by each line of business; (2) each line of business is organized and operated separately from the remainder of the employer; and (3) each of these separate lines of business meets additional statutory requirements (including administrative scrutiny) and thus constitutes a qualified separate line of business.

A separate line of business automatically meets the administrative scrutiny requirement of section 414(r)(2)(C) if it meets the statutory safe harbor of section 414(r)(3)(A). Section 1.414(r)-1 provides that a separate line of business can also automatically meet the administrative scrutiny requirement of section 414(r)(2)(C) if it meets one of the regulatory administrative scrutiny safe harbors in § 1.414(r)-5(c) through (g).

A separate line of business that does not satisfy any of these safe harbors nonetheless satisfies the administrative scrutiny requirement if the employer requests and receives a determination from the IRS, under a program implemented pursuant to § 1.414(r)-6, that the separate line of business satisfies the administrative scrutiny requirement.

Rev. Proc. 93-41 sets forth the procedures of the Internal Revenue Service (IRS) relating to the issuance of an administrative scrutiny determination, which is a determination by the IRS as to whether a separate line of business satisfies the requirement of administrative scrutiny within the meaning of § 1.414(r)-6 of the regulations. An employer may request a determination as to whether a separate line of business satisfies the administrative scrutiny requirement under § 1.414(r)-6 for a specified testing year, as defined in § 1.414(r)-11, with respect to a separate line of business described in either section 3.03 or 3.04 of Rev. Proc. 93-41. An employer cannot make a request for a testing year that ends prior to the date of the request.

A separate line of business is described in section 3.03 of Rev. Proc. 93-41 if it:

(1) meets the criteria for a line of business for the testing year under § 1.414(r)-2 and for a separate line of business for the testing year under § 1.414(r)-3;

(2) meets the 50 employee requirement of section 414(r)(2)(A) on each day of the testing year;

(3) does not satisfy any of the administrative scrutiny safe harbors of § 1.414(r)-5(b) through (g); and

(4) satisfies at least one of the following standard access alternatives:

(a) The highly compensated employee percentage ratio of the separate line of business for the testing year, as determined under § 1.414(r)-5(b), is at least 40 percent and not more than 250 percent;

(b) Ninety percent of the gross revenues of the separate line of business result from the provision of property or services that fall exclusively within one or more industry categories established by the IRS (through Rev. Proc. 91-64, 1991-2 C.B. 866), under § 1.414(r)-5(c), and no more than ten percent of the gross revenues of any of the employer's other separate lines of business result from property or services provided to customers of the employer that fall within the same industry category or categories;

(c) The employer is not required to file Form 10-K or 20-F, but there is a certification from an independent certified public accountant that the employer would have been required to report the separate line of business as one or more reportable industry segments on either the Form 10-K or the Form 20-F if the employer had been required to file the applicable Securities and Exchange Commission (SEC) report for the employer's fiscal year ending in the testing year, and the separate line of business therefore would have satisfied the administrative scrutiny safe harbor in § 1.414(r)-5(e);

(d) The separate line of business has a highly compensated employee percentage ratio, as determined under § 1.414(r)-5(b), of less than 40 percent, and either (i) the separate line of business would satisfy the average benefits safe harbor of § 1.414(r)-5(f)(2)(ii) if the actual benefit percentage of the nonhighly compensated employees of the other separate lines of business were reduced by one-third, or (ii) the separate line of business would satisfy the minimum benefit safe harbor of § 1.414(r)-5(g) if the minimum benefit were reduced by one-third;

(e) The separate line of business has a highly compensated employee percentage ratio, as determined under § 1.414(r)-5(b), of more than 250 percent, and either (i) the separate line of business would satisfy the average benefits safe harbor of § 1.414(r)-5(f)(3)(ii) if the actual benefit percentage of the highly compensated employees of the other separate lines of business were increased by one-third, or (ii) the separate line of business would satisfy the maximum

benefit safe harbor of § 1.414(r)-5(g) if the maximum benefit were increased by one-third; or

(f) The separate line of business manages a government facility pursuant to a government contract that specifies the benefits to be provided under a qualified plan.

Section 3.04 of Rev. Proc. 93-41 provides that a line of business is a separate line of business under section 3.04 if it meets paragraphs (1) through (3) of section 3.03 of Rev. Proc. 93-41, but fails to satisfy any of the standard access alternatives of paragraph (4) of section 3.03.

In accordance with section 4.03 of Rev. Proc. 93-41, for a separate line of business determination described in section 3.03 of Rev. Proc. 93-41, the IRS takes into account the factors enumerated in section 5 of Rev. Proc. 93-41 and any other relevant facts and circumstances in determining whether such separate line of business satisfies administrative scrutiny.

In accordance with section 4.04 of Rev. Proc. 93-41, for a separate line of business determination described in section 3.04 of Rev. Proc. 93-41, the IRS will scrutinize all the relevant facts and circumstances (including the factors enumerated in section 5 of Rev. Proc. 93-41) more closely in determining whether a separate line of business satisfies administrative scrutiny, and the IRS will determine that the separate line of business satisfies administrative scrutiny only in exceptional circumstances. In the case of such a determination under section 3.04 of Rev. Proc. 93-41, the taxpayer has an additional burden to demonstrate to the IRS the relevant facts and circumstances unique to the taxpayer to support a determination that the separate line of business meets administrative scrutiny, despite its failure to satisfy any of the standard access alternatives.

Section 5 of Rev. Proc. 93-41 sets out factors that are considered in determining whether a separate line of business satisfies the requirement of administrative scrutiny. The IRS takes into account all the facts and circumstances that it deems relevant, including, but not limited to, these factors. No one factor is necessarily determinative.

The factors listed in section 5 of Rev. Proc. 93-41 are as follows:

(1) Differences in property or services: The degree to which the property or services provided by the separate line of business differ from the property or services provided by the employer's other separate lines of business.

(2) Separateness of organization and operation: The degree to which the separate line of business is organized and operated separately from the remainder of

the employer, including the degree of vertical integration of the separate line of business with any other separate line of business of the employer and the degree to which the separate line of business has its own tangible assets.

(3) Nature of business competition: The nature of the business competition faced by the separate line of business, the degree to which competitors of the separate line of business are organized as independent stand-alone companies that do not engage in other separate lines of business, and the type and level of benefits provided by competitors of the separate line of business to their employees.

(4) Historical factors: Whether the separate line of business was acquired from another employer, whether it developed separately within the employer, and whether it was operated separately before the enactment of the Tax Reform Act of 1986.

(5) Geographic factors: The degree to which the separate line of business is operated in a distinct geographic area from the employer's other separate lines of business, and the impact geographic factors have on the employer's compensation and benefit policies.

(6) Safe harbors: The degree to which the separate line of business fails to satisfy the safe harbors of § 1.414(r)-5, in particular, the average benefits and minimum or maximum benefits safe harbors of §§ 1.414(r)-5(f) and (g).

(7) Size and Composition: The size and composition of the separate line of business relative to each of the employer's other separate lines of business. This factor includes the number of employees, both highly compensated and nonhighly compensated, and the highly compensated employee percentage ratio (as determined under § 1.414(r)-5(b)) in each of the employer's separate lines of business (whether or not a separate line of business for which an administrative scrutiny determination is being requested) as determined for purposes of § 1.414(r)-7.

(8) Allocation method: Which allocation method for residual shared employees the employer applies under § 1.414(r)-7(c), and the impact the allocation method will have on the number of employees who are treated as employees of each of the employer's separate lines of business.

(9) Benefits provided by separate lines of business: The relative level of benefits provided by each of the employer's separate lines of business and the percentage of employees benefiting in each of the employer's separate lines of business.

(10) Other separate lines of business: The degree to which the employer's other separate lines of business satisfy the requirements of a qualified separate line of business for the testing year under § 1.414(r)-1(b)(2).

(11) Regulated industries: Whether the separate line of business operates in a regulated industry (i.e., whether the separate line of business furnishes or sells electrical energy, water or sewage disposal services; gas or steam through a local distribution system; telephone service or other communication services; or transportation of gas or steam by pipeline) if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof.

You request a determination under section 3.04 of Rev. Proc. 93-41 that Taxpayer A satisfies the administrative scrutiny requirement to be treated as a qualified separate line of business under Code section 414(r).

provided by Taxpayer A under penalties of perjury states that it meets paragraphs (1) through (3) of section 3.03 of Rev. Proc. 93-41, but fails to satisfy any of the standard access alternatives of paragraph (4) of section 3.03. Specifically, Taxpayer A represents that it meets the criteria for a line of business for the testing year under § 1.414(r)-2 and for a separate line of business for the testing year under § 1.414(r)-3. In addition, Taxpayer A represents that it meets the 50-employee requirement of section 414(r)(2)(A) on each day of the testing year and that it does not satisfy any of the administrative scrutiny safe harbors of § 1.414(r)-5(b) through (g). Taxpayer A also represents that it does not satisfy any of the standard access alternatives under section 3.03(4) of Rev. Proc. 93-41.

In addition, the following facts and representations in support of Taxpayer A's request were submitted under penalty of perjury:

Taxpayer A

In order to attract top talent in this highly specialized field, Taxpayer A has traditionally offered generous compensation packages and has maintained a profit sharing plan as a part of that strategy.

In Year B,

Taxpayer A continued to operate autonomously and was led by the same leadership team as before the acquisition.

Taxpayer A develops its own business, maintains separate financial records, and is managed by its own chief executive officer and chief financial officer. Taxpayer A maintains its own human resources department, employee handbook, and policies and procedures. Taxpayer A maintains its own time-off policies, leave of absence rules, and severance plan.

Taxpayer A maintains its own office space in a location separate from other Company C entities. Taxpayer A's lease for office space is in Taxpayer A's name. Taxpayer A also maintains its own technology resources, including its server and network, whereas all other Company C entities outsource such functions.

Taxpayer A is

Each other separate line of business within Company C satisfies the statutory safe harbor of section 414(r)(3)(A). Taxpayer A is much smaller and provides very . Information provided indicates that Taxpayer A would satisfy the standard access alternative described in section 3.03(4)(a) of Rev. Proc. 93-41 if it had fewer highly compensated employees as of the end of the Plan X 20 testing year.

Based on the facts provided, we have made a determination under section 3.04 of Rev. Proc. 93-41 that Taxpayer A satisfies the requirement of administrative scrutiny, within the meaning of section 414(r)(2)(C) and § 1.414(r)-6, for the 20 testing year.

This determination relates only to the status of the above-referenced line of business under the administrative scrutiny requirement of section 414(r) and the regulations thereunder, and does not constitute a determination as to whether the line of business satisfies any other requirement under section 414(r).

This determination does not constitute a determination with respect to whether any plan of the above-referenced line of business is qualified under section 401(a) or whether it meets any other requirement under the Code or regulations.

This determination will apply to the 20 testing year and future testing years. However, this determination may not be relied upon if there has been a misstatement or omission of material facts. Similarly, this determination may not be relied upon if there has been a change in material fact upon which it is based.

This determination may not be relied upon if the employer is using the qualified separate line of business rules only for purposes of the separate application of the 55-percent average benefits test of section 129(d)(8).

No information provided in support of a request for an administrative scrutiny determination will constitute actual or constructive notice to the Secretary, as required under section 414(r)(2)(B), that an employer treats itself as operating qualified separate lines of business for a testing year. Such notice is provided by filing Form 5310-A, Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business, in the manner specified in Rev. Proc. 93-40, 1993-2 C.B. 535.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

/S/

Lauson C. Green
Branch Chief, Qualified Plans Branch 2
(Employee Benefits)
(Tax Exempt & Government Entities)

cc: