200009061

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Significant Index No.: 414.06-00

Contact Person:

Telephone Number:

In Reference to:
OP:E:EP:T:2

Date:

DEC 03 1999

LEGEND:

Employer A =

Corporation B =

Corporation C =

Plan D =

Plan E =

Fiduciary F =

Transaction G =

Plan H =

Plan I =

Trust M =

Trustee V =

Trustee W =

319

Trust X =

Trust Y =

Trust Z =

Dear

This is in response to your request for a private letter ruling dated and supplemented by letters dated , , and , submitted on your behalf by your authorized representative. In support of your request, you have submitted the following facts and representations.

Employer A is a publicly traded corporation engaging in four principal lines of business: (1) automotive manufacturing (directly in the United States and through subsidiaries and joint ventures in many foreign countries); (2) automotive components manufacturing (through Corporation B (a division of Employer A); (3) financial services; and (4) telecommunications and satellite. Employer A engages in the automotive components business through Corporation B, Corporation C, and domestic and foreign subsidiaries and joint ventures.

Employer A currently maintains two pension plans in which persons employed in the United States in Corporation B participate; Plan D and Plan E. Employer A has established with Trustee V, a trust to hold a portion of the assets of Plan E, Trust Y, and a separate trust to hold a portion of the assets of Plan D and certain other plans, Trust X. Employer A has also established with Trustee V and Trustee W, as co-trustees, a group trust for collective investment by such separate trusts ("Trust Z").

Trust X, Trust Y, and Trust Z are intended to qualify under section 401(a) of the Internal Revenue Code ("Code") and exempt under section 501(a) of the Code. Trust X is a master trust in which additional retirement plans participate. Plans may be added or removed as participants in Trust X from time to time. Trust Z is also intended to satisfy the requirements of Revenue Ruling 81-100, 1981-1 C.B. 326. The taxable years of Plans D and E and Trusts X, Y, and Z is the fiscal year ending September 30.

Trust X and Trust Y do not currently own any assets other than their beneficial interests in Trust Z. Trust Z currently holds publicly traded and other readily marketable securities or instruments, both domestic and foreign. Trusts (including group trusts) in addition to Trusts X, Y, and Z have been established for the benefit of Plan D and Plan E to hold certain assets. Such additional trusts and trusts established for the benefit of retirement plans other than Plan D and

320

Plan E may participate from time to time in Trust Z. Fiduciary F, as a named fiduciary with respect to Plan D and Plan E, does not currently contemplate transferring an interest in any group trusts other than Trust Z in connection with the division of Plan D and Plan E.

On , Employer A requested certain rulings under Code section 355 and related Code sections pertaining to Transaction G. It is intended that Transaction G, a spinoff of Corporation B, occur on .

Corporation B is currently organized as a division of Employer A. On , Employer A filed a ruling request to confirm that certain Corporation B-related international restructurings are tax-free to Employer A and its subsidiaries. These international restructurings are necessary to separate Corporation B's operations from Employer A's operations in various countries, so that Employer A will be in a position to contribute those assets to Corporation B in preparation for making Corporation B an independent, stand-alone corporation.

Many of Corporation B's assets are intermingled with Employer A's assets, both domestically and abroad. Transactions necessary to prepare for Transaction G resulting in Corporation B as a stand-alone corporation include Corporation B assets (some of which are held by Employer A's foreign subsidiaries that also own Employer A assets) being segregated from Employer A's other assets and Corporation B's assets then being contributed to the Corporation B corporate entity. These transactions will make Corporation B a direct subsidiary of Employer A whose only assets relate to the components business.

As part of the separation of Corporation B assets from the other Employer A assets, Employer A desires to transfer the assets and liabilities allocable to the employees of Corporation B under Plan D and Plan E to new Corporation B-sponsored retirement plans ("Plan H" and "Plan I") to be established for such employees. The transfer of assets and liabilities from Plan E to new Plan I was made through a plan division effective as of . The transfer of assets and liabilities from Plan D to new Plan H was made through a plan division effective on the final separation of Corporation B from Employer A, which occurred on . Each plan division complied with section 414(l) of the Code.

In connection with the creation of Plan H and Plan I out of Plan D and Plan E, Corporation B shall cause to be established one or more separate trusts ("Trust M", a single master pension trust) with respect to Plan H and Plan I, which is intended to qualify under sections 401(a) and 501(a) of the Code. Not all of the assets of Plan D and Plan E which will be transferred to Plan H and Plan I in connection with the plan divisions are held by Trusts X, Y, and Z. Accordingly, it is expected that Plan H and Plan I would establish other trust arrangements, in addition to Trust M, to hold all or a portion of such assets. After the creation of Plan H and Plan I, contributions to such plans may be made to the newly established Trust M, which may contribute such amounts to Trust Z in exchange for an interest therein. However, the assets attributable to Plan H and Plan I and held by Trust Z will not be initially transferred to Trust M.

Employer A and Corporation B expect that the assets of Plan H and Plan I currently invested in Trust Z will continue to be invested therein, without interruption by reason of the separation of Corporation B from Employer A. Consequently, Plan H and Plan I are expected to continue their participation in Trust X and Trust Y following the applicable plan split up (although specific assets held by Trust X and Trust Y may from time to time be physically transferred to Trust M). Plan I will be added as a participating plan to Trust Y (and the trust agreement amended accordingly), and Plan H will be added as a participating plan in Trust X.

No transfer of any interest in Trust Z or other group trust is expected to occur solely as a result of the creation of Plan H and Plan I. However, subject to the receipt of a favorable ruling from the Internal Revenue Service ("Service"), a beneficial interest in Trust Z attributable to Plan H and Plan I will be transferred from Trust X and Trust Y to the applicable Trust M as of the effective date of the respective plan divisions.

The establishment of Trust M in connection with Plan H and Plan I provides Corporation B with greater flexibility with respect to the management of the assets of Plan H and Plan I. Trustee W, as a trustee of Trust Z, has entered into arrangements with foreign exchanges and foreign tax authorities to simplify and coordinate foreign tax withholding and transfer fee obligations with respect to Trust Z. Any change in the ownership to a new Trust M would require new arrangements to be negotiated and put into place.

Employer A recognizes that to physically transfer the ownership of assets and to incur additional administrative effort and expense will not be beneficial to participants in Plan D and Plan E. Therefore, Employer A hopes these obligations and additional costs can be avoided or minimized by not physically transferring the ownership of assets from Trust Z to Trust M. It is contemplated that the beneficial interests in Trust Z would be transferred from Trust X and Trust Y to Trust M in the event the Service provides the requested relief.

Employer A represents that no transfer of assets between Trust X, Trust Y, and Trust Z will alter (a) the aggregate fair market value of Plan D's and Plan E's beneficial interest in the aggregate assets of Trusts X, Y, and Z, or (b) the value of benefits available to any Plan D and Plan E beneficiary other than as required by section 414(l) of the Code.

Based on the above, you request the following letter ruling:

The transfer of a beneficial interest in a group trust in connection with a transfer, in accordance with section 414(l) of the Code, of assets and liabilities of a trust participating in the group trust to another trust qualifying under section 401 of the Code does not cause the group trust to fail to qualify as a group trust within the meaning of Revenue Ruling 81-100.

Section 501(a) of the Code provides, in part, that a trust described in section 401(a) shall be exempt from income tax.

Section 401(a)(1) 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 of an employer for the exclusive benefit of its employees or their beneficiaries shall be qualified under this section if contributions are made to the trust by such employer, or employees, or both, for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan.

Section 414(l) of the Code provides, in pertinent part, that a trust which forms a part of a plan shall not constitute a qualified trust under section 401 unless 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 transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the transfer (if the plan had then terminated).

Section 401(a)(13) of the Code provides that a trust shall not constitute a qualified trust unless the plan of which such trust is a part provides that benefits under the plan may not be assigned or alienated.

Federal Income Tax Regulation section 1.401(a)-13(c)(1) states, in relevant part, that the term "assignment" includes — (i) any arrangement providing for the payment to the employer of plan benefits which otherwise would be due the participant under the plan, and (ii) any direct or indirect arrangement (whether revocable or irrevocable) whereby a party acquires from a participant or beneficiary a right or interest enforceable against the plan in, or to, all or any part of a plan benefit payment which is, or may become, payable to the participant or beneficiary.

Federal Income Tax Regulation section 1.401(a)-13(c)(2)(iv) provides that an assignment does not include any arrangement for the transfer of benefit rights from the plan to another plan.

Revenue Ruling ("Rev. Rul.") 81-100, 1981-1 C. B. 326, involves the tax exempt status of trusts forming parts of qualified retirement plans under which the individual trusts pool their assets in a group trust (usually created for the purpose of providing diversification of investments) where the group trust is declared to be part of the qualified plan and the trust instruments creating both the participating and group trusts provide that amounts shall be transferred from one trust to the other at the direction of the trustee of the participating trust.

Rev. Rul. 81-100 sets forth certain requirements which a group trust must satisfy in order to be exempt from taxation under section 501(a) of the Code with respect to its funds which equitably belong to participating trusts described in section 401 of the Code. In addition, the

status of individual trusts as qualified under section 401(a) and exempt from taxation under section 501(a) will not be affected by the pooling of their funds in a group trust if these requirements are satisfied. Of the requirements listed in Rev. Rul. 81-100, the fourth requirement, in particular, states, "The group trust instrument prohibits assignment by a participating employer's trust of any part of its equity or interest in the group trust."

By making contributions to a participating trust, which provides that from time to time amounts so contributed may be transferred to and from a specified group trust, the employer and any participating employees, in effect, make contributions to the group trust for purposes of section 401(a)(1) of the Code.

The result of the requirements stated in Rev. Rul. 81-100 is that assets held in the group trust are subject to the same requirements concerning their use and the benefits they provide as are the assets held directly by the participating plans. Consequently, the prohibition against assignment under section 401(a)(13) is applicable to group trusts. As indicated above, the fourth requirement reflects the section 401(a)(13) rules. In general, as defined in sections 1.401(a)-13(c)(1) and 1.401(a)-13(c)(2)(iv) of the Federal Income Tax Regulations, an assignment involves payment of a participant's benefit to his employer or an arrangement under which a party acquires from the participant a right or interest enforceable against the plan of all or part of the participant's benefit. Trust M has adopted and is a part of Trust Z. The transfer to Trust M of a beneficial interest in Trust Z that is owned by Trusts X and Y but which is attributable to Plans H and I as a result of a transfer of assets and liabilities made in accordance with section 414(l), does not constitute an assignment. As a result of the transfer of assets and liabilities being made through the plan divisions, retirement benefits of the affected employees and beneficiaries remain unchanged; they will be held in new Trust M under new Plans H and I maintained by Corporation B as a stand-alone corporation. The assets and liabilities allocable to the employees of Corporation B are not being allocated to individuals other than those employees. Section 401(a)(13) and Rev. Rul. 81-100 could not have intended section 414(l) transfers to be assignments, especially in cases where the new plan has adopted the group trust.

The split up of a plan involves the creation of additional plans out of a single plan and a corresponding allocation of assets and liabilities among such plans. All of the participants and beneficiaries of the original plan remain as participants and beneficiaries of at least one of the resulting plans, and the terms of the retirement benefits are unchanged by such plan split up. A transfer of an interest in a group trust pursuant to a plan split up is fundamentally different than a sale or exchange of a group trust interest between unrelated retirement plans.

Accordingly, it is ruled that the transfer of a beneficial interest in a group trust in connection with a transfer, in accordance with section 414(l) of the Code, of assets and liabilities of a trust participating in the group trust to another trust qualifying under section 401 of the Code does not cause the group trust to fail to qualify as a group trust within the meaning of Rev. Rul. 81-100.

The above ruling is based upon the assumption that Plans D, E, H and I will be qualified under section 401(a) of the Code at all relevant times.

This ruling 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 by others as precedent.

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

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd
Chief, Employee Plans
Technical Branch 2

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

cc: