200248029

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

SEP 6 2002

T:EP:RA:T4

Uniform Issue List: 401.04-00, 414.02-00

Attention:

Legend:

Corporation A =

Plan X =

Dear :

This letter is in response to a ruling request dated April 25, 2002, submitted on your behalf by your authorized representative.

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

Corporation A is part of a controlled group of corporations ("Corporation A Controlled Group") as described in section 414(b) of the Internal Revenue Code ("Code"). In 2000, the Corporation A Controlled Group filed notice of its election to be treated as operating qualified separate lines of business ("QSLOBs"). Pursuant to that election, Corporation A is in a QSLOB ("Corporation A QSLOB") with only some of the corporations in the Corporation A Controlled Group.

Corporation A sponsors and maintains Plan X, a qualified defined benefit plan under section 401(a) of the Code. A participant under Plan X is eligible to receive payment of a benefit in the form of a straight life annuity, a lump sum payment, or other optional form of payment.

As required by section 401(a)(4) of the Code and section 1.401(a)(4)-5(b)(3) of

the Income Tax Regulations ("regulations"), Plan X restricts the payment of benefits to or on behalf of certain participants in any year to an amount that does not exceed an amount equal to the payments that would be made to or on behalf of the participant in that year under a straight life annuity that is the actuarial equivalent of the accrued benefit and other benefits to which the participant is entitled under Plan X ("Restricted Amount"). Plan X further provides that this distribution restriction applies only to those participants (1) who are currently highly compensated employees ("HCEs") of the employer who are benefiting under Plan X, or who are former HCEs ("former HCEs") of the employer (collectively, the HCEs and former HCEs are referred to as "Distributees"), and (2) who are among the 25 employees or former employees of the employer (the "High-25 Group") with the largest amount of compensation in the current or any prior plan year.

Plan X has one or more Distributees who are currently eligible to receive distributions of their accrued benefits from Plan X. As to each Distributee, after taking into account the payment of all benefits due to him or her under Plan X, the value of Plan X's assets will not equal or exceed 110% of the value of Plan X's current liabilities before the distribution to the Distributee. Additionally, the value of the benefits payable to or on behalf of each Distributee exceeds the amount prescribed by section 411(a)(11)(A) of the Code and is greater than 1% of the value of Plan X's current liabilities before any such distribution.

Plan X proposes to make distributions in excess of the Restricted Amount to those Distributees whom Corporation A believes are not in the High-25 Group

Based on the above facts and representations, the following rulings have been requested:

1. For purposes of section 401(a)(4) of the Code and section 1.401(a)(4)-5(b)(3)(ii) of the regulations, Plan X may determine the High-25 Group for purposes of distributions under Plan X from among the current and former employees of the entire Corporation A Controlled Group, without excluding current employees of the Corporation A Controlled Group who are not members of the Corporation A QSLOB.

2. The distribution of benefits from Plan X to those Distributees determined to be outside of the High-25 Group will not be limited by the Restricted Amount provisions of section 1.401(a)(4)-5(b)(3)(i) of the regulations.

Section 401(a)(4) of the Code requires that the contributions or benefits provided under a qualified plan not discriminate in favor of highly compensated employees

(within the meaning of section 414(q)).

Section 1.401(a)(4)-5(b)(3)(i) of the regulations provides, in pertinent part, that a plan must provide that, in any year, the payment of benefits to or on behalf of a restricted employee shall not exceed an amount equal to the payments that would be made to or on behalf of the restricted employee in that year under a straight life annuity that is the actuarial equivalent of the accrued benefit and other benefits to which the restricted employee is entitled under the plan.

Section 1.401(a)(4)-5(b)(3)(ii) of the regulations provides that, for purposes of this paragraph (b), the term restricted employee generally means any HCE or former HCE. However, an HCE or former HCE need not be treated as a restricted employee in the current year if the HCE or former HCE is not one of the 25 (or larger number chosen by the employer) nonexcludable employees and former employees of the employer with the largest amount of compensation in the current or any prior year. Plan provisions defining or altering this group can be amended at any time without violating section 411(d)(6).

Section 1.401(a)(4)-12 of the regulations defines "employer" the same as defined in section 1.410(b)-9 of the regulations.

Section 1.410(b)-9 of the regulations provides that "employer" means the employer maintaining the plan and those employers required to be aggregated with the employer under sections 414(b), (c), (m), or (o) of the Code.

Section 414(b) of the Code provides, in pertinent part, that for purposes of section 401 and 410 of the Code, all employees of all corporations which are members of a controlled group of corporations shall be treated as employed by a single employer.

Section 1.401(a)(4)-12 of the regulations defines "nonexcludable employee" the same as defined in section 1.410(b)-9 of the regulations, other than excludable employees with respect to the plan as determined under section 1.410(b)-6 of the regulations.

Section 1.410(b)-6(e) of the regulations provides, in part, that if an employer is treated as operating QSLOBs for purposes of section 414(b) in accordance with section 1.414(r)-1(b), in testing a plan that benefits employees of one QSLOB, the employees of the other QSLOBs of the employer are treated as excludable employees.

Section 1.414(r)-8(c)(1) of the regulations provides that, in general, for purposes of the QSLOB regulations, the requirements of section 410(b) encompass the

requirements of section 401(a)(4). Therefore, if the requirements of section 410(b) are applied separately with respect to the employees of each QSLOB of an employer for purposes of testing one or more plans of the employer for plan years that begin in a testing year, the requirements of section 401(a)(4) must also be applied separately with respect to the employees of the same QSLOB for purposes of testing the same plans for the same plan years.

Although the regulations provide that the requirements of section 401(a)(4) of the Code must generally be satisfied on a QSLOB by QSLOB basis if a QSLOB election is made, we do not believe that this requirement applies to the High-25 Group determination under section 1.401(a)(4)-5(b)(3)(ii) of the regulations. Thus, the High-25 Group determination is not made on a QSLOB basis, but rather is made taking into account all current and former employees of the employer. In this case, since Corporation A is part of a controlled group of corporations, the High-25 determination with respect to both current and former employees is made taking into account the entire Corporation A Controlled Group.

Thus, with respect to ruling request one, we conclude that, for purposes of section 401(a)(4) of the Code and section 1.401(a)(4)-5(b)(3)(ii) of the regulations, Plan X may determine the High-25 Group for purposes of distributions under Plan X from among the current and former employees of the entire Corporation A Controlled Group, without excluding current and former employees of the Corporation A Controlled Group who are not members of the Corporation A QSLOB.

Furthermore, with respect to ruling request two, we conclude that the distribution of benefits from Plan X to those Distributees determined to be outside of the High-25 Group determined on a controlled group basis will not be limited by the Restricted Amount provisions of section 1.401(a)(4)-5(b)(3)(i) of the regulations.

The above rulings are based on the assumption that Plan X is at all times qualified under section 401(a) of the Code

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations that may be applicable 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.

This ruling letter was prepared of this Group.
He may be contacted at

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative.

Sincerely yours,

Alan C. Pipkin
Manager, Technical Group 4
Employee Plans