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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UIC #: 401.10-03

JUL 23 2003

ATTN:

T:EP:RA:T:3

LEGEND:

Participant A:

Company M:

Company N:

Plan X:

Court Y:

State Z:

Date 1:

Date 2:

Date 3:

Date 4:

Year 5:

Date 6:

Amount 1:

Ladies and Gentlemen:

This is in response to the , letter submitted on your behalf by your authorized representative, in which you request a letter ruling under § 401(a)(13) of

the Internal Revenue Code with respect to a proposed transaction described herein. The following facts and representations support your ruling request.

Company M, which has its principal office in State Z, maintains Plan X on behalf of certain of its employees. Company N is the trustee of Plan X. Plan X is a defined contribution plan that contains a cash or deferred arrangement (CODA) described in Code § 401(k).

Your authorized representative asserts that Plan X is qualified within the meaning of Code § 401(a) and its trust tax-exempt pursuant to Code § 501(a). Plan X received its most recent favorable Determination Letter on Date 4, 1997.

§ 12.11 of Plan X provides, in summary, that, except as provided in...§ 1.401(a)-13(b)(2) of Treasury Regulations, or as otherwise required by law, benefits provided under the plan shall not be alienated, assigned, encumbered, garnished etc.

Participant A has been an employee of Company M since June, Year 5. Participant A has an account in Plan X's CODA. Currently, Participant A has no right to a distribution of amounts standing to his credit under Plan X.

On Date 1, 1987, Participant A was convicted of violations of 21 United States Code (U.S.C.) § 841(a)(1) and 18 U.S.C. § 2. In addition to receiving a term of imprisonment, Participant A was assessed a fine in the amount of Amount 1 with interest at the rate of 1.5% per year.

Pursuant to the procedures authorized by the Federal Debt Collection Procedures Act of 1977 (FDCPA), 28 U.S.C. sections 3001-3308, the United States filed an application for a writ of garnishment against Participant A's Plan X account with Court Y. On Date 2, 1999, Court Y issued an Order of Garnishment pursuant to which it ordered Company M, as garnishee, to pay the United States sums being held in Plan X on behalf of Participant A. Said payments were to continue until Participant A's debt to the United States is paid in full, or until the garnishee no longer has possession, custody or control of any property belonging to Participant A, or until further order of the court. On Date 6, 2002, Court Y issued an order for continuing garnishment.

On Date 3, 2002, Court Y issued a Consent Order pursuant to which its previous orders, referenced above, were stayed for a period of six (6) months. The order also required Company M to request a letter ruling from the Internal Revenue Service that Plan X's paying the United States Government amounts from Participant A's Plan X account to satisfy the fine, referenced above, will not disqualify Plan X. This request for letter ruling was filed by Company M pursuant to the Date 3, 2002, Consent Order.

Based on the above facts and representations, Company M, through its authorized representative, request the following letter ruling:

> That Company M's honoring the above described Court Y Order of Garnishment pursuant to which Company M was ordered to pay amounts from Participant A's Plan X account to the United States will not result in the failure of Plan X to meet the requirements of Code § 401(a)(13).

With respect to your ruling request, Code § 401(a)(13) provides, in general, that a trust shall not constitute a qualified trust under Code § 401(a), unless the plan of which the trust is a part provides that benefits under the plan may not be assigned or alienated. A limited exception applies to the voluntary and revocable assignment of up to 10 percent of any benefit payment to a plan participant in pay status.

Code section 401(a)(13) provides exceptions to the anti-alienation rule of Code § 401(a)(13)(A) which are not pertinent in the instant case.

§ 1.401(a)-13(b)(2)(i) of the Income Tax Regulations provides that the anti-alienation rule of Code § 401(a)(13) does not apply to the enforcement of a federal tax levy made pursuant to Code § 6331.

§ 1.401(a)-13(b)(2)(ii) provides that the anti-alienation rule of Code § 401(a)(13) does not apply to "the collection by the United States on a judgment resulting from an unpaid tax assessment".

§ 1.401(a)-13(c)(1)(ii) provides that an assignment or alienation for purposes of Code § 401(a)(13) includes "any direct or indirect arrangement whereby a party acquires a right enforceable against a plan in, or to all, or any part of a plan benefit which may become payable to a participant or beneficiary.

The FDCPA is codified at 28 U.S.C. sections 3001 to 3308. 28 U.S.C. § 3002(3) provides, in relevant part, that a fine is a form of debt subject to collection under the FDCPA.

28 U.S.C. § 3205 provides, in relevant part, that a court may issue a writ of garnishment against property (including nonexempt disposable earnings) in which the debtor has a substantial interest and which is in the possession, custody of a person other than the debtor, in order to satisfy a judgment against the debtor.

18 U.S.C. § 3613(a)(1) provides that the United States may enforce a judgment imposing a fine in accordance with the practices and procedures for the enforcement of a civil judgment under Federal or State law against all property or rights to property of the person fined except that property exempt from levy for taxes pursuant to sections

6334(a)(1), (2), (3), (4), (5), (6), (7), (8), (10) and 12 of the Internal Revenue Code shall be exempt from enforcement of the judgment under Federal law.

None of the above-referenced subsections of Code § 6334(a) apply to pensions or benefits provided under a retirement plan described in Code § 401(a).

28 U.S.C. § 3014(a), in pertinent part, applies the exemptions found under either 11 U.S.C. § 522(d) (Bankruptcy) or the law of a debtor's domicile to enforcement actions under the FDCPA.

11 U.S.C. § 522(d)(10)(E), in pertinent part, exempts payments under a "stock bonus, pension, profit-sharing, annuity, or similar plan or contract..." which is qualified under either Code § 401(a), 403(a), 403(b) or 408 from a debtor's estate in a bankruptcy action.

18 U.S.C. § 3613(a)(2) provides that 28 U.S.C. § 3014 shall not apply to the enforcement of a fine under Federal law.

18 U.S.C. § 3613(c) provides that a fine imposed as part of a criminal sentence pursuant to the provisions of subchapter C of chapter 227 of Title 18 (sections 3571 et. seq.) or an order of restitution made pursuant to this title is a lien in favor of the United States on all property and rights to property of the person fined as if the liability of the person fined were a liability for a tax assessed under the Internal Revenue Code of 1986.

The Legislative History of 18 U.S.C. § 3613 provides, in relevant part, that criminal fines are to be treated as if they were debts for delinquent income taxes under the Internal Revenue Code. The Legislative History also indicates that the only property exempt from execution for a criminal fine is that property described in § 3613(a)(1) which is a subset of that property exempted from levy for the collection of income taxes under 26 U.S.C. § 6334(a). See H. Rep. No. 98-1030, S. Rep. No. 98-364, and H. Conf. Rep. No. 98-1159, all of which are reprinted at 1984 U.S.C.C.A.N. 3182, 3318-23.

With respect to your ruling request, 18 U.S.C. § 3613 and its Legislative History indicate that the United States may enforce a judgment to collect a criminal fine rendered in its favor against all of a defendant's property except that property which would be exempt from a levy for the payment of federal income taxes. Pursuant to 18 U.S.C. 3613(a)(1), certain exemptions under § 6334(a) of the Code apply to actions to enforce a criminal fine. However, a plan participant's interest in a qualified plan does not come within any of the cited Code § 6334(a) exemptions.

Thus, since none of the specific exemptions found in 18 U.S.C. § 3613 applies to the collection of fines, said section authorizes the United States to collect a fine imposed against an individual from the fined individual's interest in a qualified retirement plan.

However, the issue is then raised as to whether said collection would violate Code § 401(a)(13).

Two recent cases have held that the federal government may collect criminal fines from a pension plan without disqualifying the plan. In United States v. Tyson, No. 02-X-73808 (E.D. Mich. April 9, 2003), a case involving essentially the same facts as this ruling request, a participant in the Ford Motor Company Retirement Trust was convicted in federal court and ordered to pay restitution. The federal government filed an Application for a Writ of Continuing Garnishment under the FDCPA and the Magistrate Judge ruled that the government was entitled to garnish the participant's interest in the Ford Trust. Slip Op. at 1.

Ford argued that Code § 401(a)(13) prohibited the garnishment since § 1.401(a)-13(b)(2) of the regulations only exempts federal tax liabilities and not liabilities that are "like" tax liabilities or "similar to" tax liabilities. Slip. Op.at 4-5. The Court disagreed and held that under the FDCPA, a fine is a lien "in favor of the government, and that the liability is treated "as if" it were a liability for an assessed tax. Slip Op. at 6. The Court then held that collection of the ordered restitution falls implicitly within the exception listed in regulation § 1.401(a)-13(b)(2)(ii) for "collection by the United States on a judgment resulting from an unpaid tax assessment". Id.

The United States Court for the Eastern District of Michigan also ruled in favor of permitting garnishment in United States v. Clark, No. 02-X-74872 (E.D. Mich. June 11, 2003). In Clark, a participant in the Ford Motor Company-UAW Retirement Plan was convicted for his involvement in a food stamp conspiracy, sentenced to a term of imprisonment and fined $240,000. The federal government sought a writ of garnishment against the participant's interest in the plan, arguing that pension benefits are subject to garnishment under the FDCPA for restitution in a criminal case.

Ford argued that criminal restitution is not specifically listed among thee exceptions to anti-alienation specified in Code § 401(a)(13) and regulation § 1.401(a)-13(b)(2). Slip.Op. at 4-5. Ford did not distinguish the Tyson case or explain why criminal restitution should be treated differently than a criminal fine. In any event, the Court rejected Ford's argument and followed the holding and reasoning of Tyson. Slip Op. at 6. The Court also relied on United States v. Rice, 196 F. Supp. 1196, 1201 (N.D. Okla. 2002) which concluded that an ERISA plan was subject to garnishment to satisfy a criminal fine pursuant to the FDCPA.

Finally, the Court distinguished Guidry v. Sheet Metal Workers Nat'l Pension Plan, 493 U.S. 365 (1990), reasoning that Guidry left room for Congress to provide exceptions to the anti-alienation rule, and concluding that Congress created such an exception when it enacted the FDCPA. Slip Op. at 7. Guidry also did not preclude the

Treasury Department and the Internal Revenue Service from crafting exceptions to the anti-alienation rule in regulations as when regulation § 1.401(a)-13(b)(2) was published.

The above-referenced sections of the United States Code indicate that a judgment rendered by a federal court imposing a fine payable to the United States is to be treated as a tax liability. As such, it is a reasonable interpretation of § 1.401(a)-13(b)(2)(ii) of the regulations that said section authorizes the enforcement of such judgment against a plan participant's interest in a Code § 401(a) plan irrespective of the general anti-alienation rule of Code § 401(a)(13).

Thus, after careful consideration, and consistent with the holdings and the rationales of the courts in Tyson and Clark, we are of the opinion that the general anti-alienation rule of Code § 401(a)(13) does not preclude a court's garnishing the account balance of a fined participant in a qualified pension plan in order to collect a fine imposed in a federal criminal action.

That Company M's honoring the above described Court Y Order of Garnishment pursuant to which Company M was ordered to pay amounts from Participant A's Plan X account to the United States will not result in the failure of Plan X to meet the requirements of Code § 401(a)(13).

This letter ruling is based on the facts and representations contained herein.

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

This letter is directed only to the taxpayer that requested it and is based solely on the representations made with respect thereto. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Point of contact with respect to this letter ruling
who may be reached (phone)).

Sincerely yours,

Frances V. Sloan
Manager, Employee Plans
Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose