200551028

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 29 2005

Uniform Issue List 4980.00-00

Attention:

Legend:

Company A =

Insurance Company B =

Company C =

Receiver D =

State M =

Court P =

Order R =

Plan X =

Plan Y =

Plan Z =

Dear

This is in response to your letter dated March 17, 2004, submitted by your authorized representative in which you requested a ruling, on behalf of Company A, concerning sections 401 and 4980 of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted:

Company A is a dissolved corporation in State M. Having fallen into debt, Company A gradually shut down its manufacturing operations and laid off its employees from late [redacted] until May [redacted]. Company A completely ceased its manufacturing operations on May 1, [redacted]. Company A maintained Plans X and Y. Plans X and Y were terminated on January 31, and November 6, [redacted], respectively. In each case, a group annuity contract to pay all plan benefits was purchased from Insurance Company B with Company A as the policyholder. Company A established a qualified replacement plan (Plan Z) under section 4980(d)(1) and (3) of the Code, received a reversion from the terminating plans and paid the appropriate excise tax of the employer reversion under sections 4980(a) and (d)(l).

On May 7, [redacted], Company A, in order to secure payment of its business debts, executed a trust mortgage with Receiver D. Receiver D is a not for profit, member-owned trade association, which works with distressed debtor companies to provide business-to-business credit and financial services. Under the trust mortgage, Company A transferred all of its non-real property to Receiver D as collateral to be sold to pay Company A's debts to creditors; mortgaged its real property to Receiver D; and agreed to sell such real property on terms agreeable to Receiver D and to turn over the sale proceeds to Receiver D. Receiver D was required to distribute to creditors all monies received in essentially the order of priority set forth in The Bankruptcy Code of State M.

On November 1, [redacted], Court P placed Company A in receivership under State M law by Order R. Court P appointed Receiver D as trustee and receiver of Company A to complete the liquidation and distribution of its remaining assets.

On April 4, [redacted], Company A terminated Plan Z. On January 9, [redacted] another group annuity contract to pay all Plan Z benefits was purchased from Insurance Company B, with the trustees of Plan Z being the policyholder. Company A received a reversion from the terminating plan, and paid the appropriate excise tax on the reversion under section 4980(a) of the Code.

On February 17, [redacted], Court P entered Order R. Pursuant to Order R, creditors holding allowed unsecured claims against Company A received a pro rata distribution of approximately 74 percent of the allowed amount of such claims. In addition, Company A was summarily dissolved, the receivership proceedings were terminated and the receivership case was closed.

Effective October 26, [redacted], Insurance Company B converted from a mutual insurance holding company into a stock company pursuant to a detailed written plan of conversion. Under the demutualization, Insurance Company B was merged into its subsidiary, Company C, a publicly-traded holding company whose common stock was then distributed to eligible policyholders for compensation in the form of stock in Company C, or in certain cases cash or policy/contract enhancements, and all membership interests in Insurance Company B were terminated. As noted above, Company A was the policyholder for Plans X and Y, and the trustees of Plan Z were the policyholder for Plan Z

In February or March [redacted], Company C stock was issued as demutualization compensation to the policyholders of Plan X, Plan Y, and Plan Z:

On June 21, [redacted], Court P entered Order R under which the state receiver case was re-opened and Receiver D was re-appointed as trustee and receiver of Company A. The receiver was established following the 2001 demutualization of Insurance Company B. Receiver D was re-appointed as receiver to Company A to collect, liquidate and distribute Company A's direct and indirect interest in Company C's stock as possible surplus assets of Plan X, Plan Y, and Plan Z.

Receiver D sold the Company C stock received on account of the annuity contracts, on December 10, [redacted], and deposited all of the net proceeds of each stock sale in the appropriate trust account.

Based on the foregoing, you request a ruling that under the circumstances described above, the proposed receipt and retention of the demutualization proceeds by Company A do not constitute a receipt of plan assets or plan property by an employer so as to so as to effectuate an employer reversion from a qualified plan within the meaning of section 4980(a) and (c) (2) of the Code.

Section 4980 of the Code provides rules for the tax applicable on the reversion of qualified plan assets to an employer. Section 4980(a) provides for the imposition of a tax of 20 percent of the amount of any employer reversion from a qualified plan. Section 4980(b) provides that the tax under section 4980(a) is to be paid by the employer maintaining the plan. Section 4980(d) provides, in general, that section 4980(a) is applied by substituting "50 percent" for "20 percent" with respect to any employer reversion from a qualified plan unless (A) the employer establishes or maintains a qualified replacement plan, or (B) the plan provides benefit increases meeting the requirements of section 4980(d)(3).

Section 4980(c)(2)(A) of the Code provides that the term "employer reversion" means the amount of cash and the fair market value of other property received (directly or indirectly) by an employer from the qualified plan. Section 4980(c)(2)(B)(i) provides

that the term employer reversion does not include, except as provided in regulations, any amount distributed to or on behalf of any employee (or his beneficiaries) if such amount could have been so distributed before termination of such plan without violating any provision of section 401.

Plan X and Plan Y were terminated in [redacted]. In each case a group annuity contract was purchased from Insurance Company B to pay plan benefits. Plan Z was established as a qualified replacement plan for Plan X and Plan Y. In [redacted], Company B was placed in receivership, and in [redacted] Plan Z was terminated. A group annuity contract was purchased from Company B to pay all plan benefits, and Company A received a reversion from the terminating plan and paid all appropriate excise taxes under section 4980 of the Code.

Following the termination of Plans X, Y, and Z and the distribution of assets, the mutual life insurance company from which the group annuity contracts had been purchased, Company B, became a stock insurance company, Company C.

In [redacted], Company C stock was received as demutualization compensation to the policyholders of Plan X, Plan Y, and Plan Z. Receiver D sold the Company D stock and deposited all of the net proceeds in the appropriate trust account.

It is represented Plans X, Y, and Z were properly terminated and all obligations and claims under the plan were satisfied prior to the demutualization of Insurance Company B. Since the Plan X trust was not in existence at the time of the demutualzation of Insurance Company B, and all obligations and claims of Plan X were satisfied prior to the demutualization, such shares cannot be considered assets of Plan X. Because Company A will not receive any surplus amounts from Plan X, Plan Y, or Plan Z following such distributions, no reversion subject to tax under section 4980 will occur.

Accordingly with respect to your ruling request, we conclude that the proposed receipt and retention of the demutualization proceeds by Company A does not constitute a receipt of plan assets or plan property by an employer so as to effectuate an employer reversion from a qualified plan within the meaning of section 4980(a) and (c) (2) of the Code.

Please note that whether shares received as part of the demutualization are the property of Company A, as policy holder under the group annuity contract, or the annuitants under the group contract is a matter of state or other applicable law, not the Internal Revenue Code, and therefore we express no opinion.

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.

This letter (original) is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions, please call ********** (ID **-*****) at (***) ***-**** (not a toll free number).

Sincerely Yours,

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Notice of Intention to Disclose
Deleted Copy of Ruling

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