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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 9100.00-00; 414.18-00

DEC - 4 2006

***Legend:***

Company A =

Company B =

Company C =

Company D =

Company E =

Company F =

Company G =

Firm M =

Firm L =

Date 1 =

Date 2 =

Date 3 =

Dear

This is in response to the July 31, 2006, letter that was submitted on your behalf by your authorized representative, as supplemented by correspondence dated November 30, 2006, in which you request an extension of time pursuant to section 301.9100-3 of the Procedure and Administration Regulations ("P&A Regulations") to file

the notice of election described in section 3 of Rev. Proc. 93-40, 1993-2 C.B. 535, to be treated as operating qualified separate lines of business ("QSLOBs") ") under section 414(r)(2) of the Internal Revenue Code (the "Code") and sections 1.414(r)-1(b) and 1.414(r)-4 of the Income Tax Regulations ("I.T. Regulations").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Company A is involved in the business of manufacturing hooks and standards for the metal shelving that commercial retail establishments utilize. Company A sponsors the Company A Salary Deferral and Profit Sharing Plan (the "Non-Union Plan") and the Company A Union 401(k) Plan (the "Union Plan"), both of which are intended to be qualified cash or deferred arrangements under section 401(k) of the Code. Both the Non-Union Plan and the Union Plan have plan years ending December 31. Firm M acted as administrator for both of the Company A plans during the years 2000 through 2003 and continues to act as the administrator.

On Date 1, 2000, Company A created Company B as a wholly owned subsidiary. Between Date 2, 2000 and Date 3, 2001, Company B acquired Company C, Company D, and Company E, and caused Company F, a limited liability company owned by Company B and disregarded for federal income tax purposes, to purchase the assets of Company G. Company B and its subsidiaries are involved in the manufacture and distribution of lighting fixtures and components for lighting fixtures.

Company A retained Firm L to advise it in connection with the acquisition activities of Company B. Company A engaged Firm M to provide administrative services to the Non-Union Plan during 2000 to 2003 and currently.

During 2002, attorneys at Firm L reviewed the Non-Union Plan and Company B's acquisition activities and reached a preliminary conclusion that Company A and Company B could be classified as QSLOBs under the provisions of section 414(r) of the Code. However, Firm L did not inform Company A of the requirement to file a notice with the Internal Revenue Service ("IRS") electing QSLOB status.

During early 2003, Firm M provided Company A with a questionnaire in order to collect information for the preparation of the 2002 Form 5500, Annual Return/Report of Employee Benefit Plan, for the Non-Union Plan. The questionnaire did not contain any question that would elicit a response indicating that Company B and its subsidiaries existed. Consequently, Firm M did not include the employees of Company B and its subsidiaries when testing Company A's plan compliance and failed to advise Company A of the requirement that it file a notice with the IRS electing QSLOB status.

In 2004, Firm M revised its questionnaire. Company A responded to the revised questionnaire in 2005. As a result of Company A's responses, Firm M became aware that nothing had been done to adapt the Non-Union Plan to the new circumstances created by Company B's acquisition activities and notified Firm L. Immediately

thereafter, Company A and Firm L reviewed the plans and verified that Company A and Company B (and its subsidiaries) could be classified as two QSLOBs. Company A and Firm L further determined that the only element preventing the separate lines of business from being QSLOBs was the failure to file notification of the QSLOB election with IRS. Finally, Company A and Firm L determined that the first QSLOB testing period was calendar year 2002 and that the notice of QSLOB election should have been filed by October 15, 2003. Thus, the statute of limitations with respect to the QSLOB election, had it been timely made, did not expire until October 15, 2006 (i.e., after the request for an extension was submitted to IRS).

Your authorized representative has submitted an affidavit from Firm L containing a statement that Firm L did not advise Company A to make a QSLOB notification filing before the deadline for filing the notice had passed.

Based on the foregoing facts and representations, you, through your authorized representative, have requested a ruling that the IRS grant Company A an extension of time under sections 301.9100-1 and 301.9100-3 of the P&A Regulations to file with the Secretary of the Treasury the notice of election to be treated as QSLOBs, as required by section 414(r)(2)(B) of the Code and Rev. Proc. 93-40.

In general, section 414 of the Code provides that for purposes of sections 129(d)(8) and 410(b) of the Code 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 section 410(b) (including the nondiscrimination requirements of section 401(a)(4) of the Code and the minimum participation requirements of section 401(a)(26) of the Code) separately with respect to employees of each qualified separate line of business.

Section 414(r)(2)(B) of the Code indicates that one of the requirements for being treated as having qualified separate lines of business is for the employer to notify the Secretary that the line of business is being treated as a separate line of business for purposes of sections 129(d)(8) and 410(b) of the Code.

Section 3 of Rev. Proc. 93-40 sets forth the exclusive rules for satisfying the notice requirement of section 414(r)(2)(B) of the Code. Section 3.03 of Rev. Proc. 93-40 provides that notice must be given 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. Section 3.05 of Rev. Proc. 93-40 provides that notice for a testing year must be given on or before the Notification Date for the testing year. The Notification Date for a testing year is the later of October 15 of the year following the testing year or the 15th day of the 10th month after the close of the plan year of the plan of the employer that begins earliest in the testing year. Section 3.06 of Rev. Proc. 93-40 provides, in pertinent part, that after the Notification Date, notice cannot be modified,

withdrawn or revoked, and will be treated as applying to subsequent testing years unless the employer takes timely action to provide a new notice.

With respect to minimum coverage requirements for members of a controlled group that undergoes a change in membership, section 410(b)(6)(C) of the Code provides that the minimum coverage requirements are automatically treated as met during the period beginning on the date of change in the members of a controlled group and ending on the last day of the first plan year beginning after the date of the change (the "transition period") if the minimum coverage requirements were met immediately before each the change, and the coverage under the plan is not significantly changed during the transition period (other than by reason of the change in members of the group).

Under section 301.9100-1(c) of the P&A Regulations, the Commissioner of Internal Revenue may grant a reasonable extension of time to make a regulatory election, or certain statutory elections under Subtitle A of the Code if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting the relief will not prejudice the interests of the government. Section 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. Notice that an employer has elected to be treated as operating qualified separate lines of business pursuant to sections 414(r) of the Code and section 3 of Rev. Proc. 93-40 is a regulatory election.

The Commissioner has authority under sections 31.9100-1 and 301.9100-3 to grant an extension of time if a taxpayer fails to file a timely notice of election under section 3 of Rev. Proc. 93-40. Section 301.9100-3 provides that the Commissioner will grant an extension of time when the taxpayer has acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

Section 301.9100-3 of the P&A Regulations provides that applications for relief that fall within section 301.9100-3 of the P&A Regulations will be granted when the taxpayer provides evidence (including affidavits described in section 301.9100-3(e)(2)) to establish that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief would not prejudice the interests of the government.

Section 301.9100-3(b)(1) of the P&A Regulations provides that a taxpayer will be deemed to have acted reasonably and in good faith (i) if its request for section 301.9100-1 relief is filed before the failure to make a timely election is discovered by the Service; (ii) if the taxpayer inadvertently failed to make the election because of intervening events beyond the taxpayer's control; (iii) if the taxpayer failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) the taxpayer reasonably relied upon the written advice of the Service; or (v) the taxpayer reasonably relied on a qualified tax professional,

including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(c)(1)(ii) of the P&A Regulations provides that ordinarily the interests of the Government will be treated as prejudiced and that ordinarily the Service will not grant relief when tax years that would have been affected by the election had it been timely made are closed by the statute of limitations before the taxpayer's receipt of a ruling granting relief under this section.

The information presented and documentation submitted by Company A is consistent with its assertion that the failure to file the election to be treated as qualified separate lines of business on or before the fifteenth day of the tenth month of the year following the testing year (i.e., October 15, 2003) was caused by its lack of awareness of the necessity of making an election, coupled with its reasonable reliance on Firm L and Firm M, who were attorneys, tax professionals, and plan administrators retained by Company A, and who failed to advise Company A to file the notice of election of QSLOB status before the deadline for making the election.

Based on the above, Taxpayer A meets the requirements of section 301.9100-3(b)(1) of the P&A Regulations, clauses (iii) and (v). As a result, we conclude that good cause has been shown for the failure to timely make the election provided for in section 3 of Rev. Proc. 93-40, and further, that the other requirements of section 301.9100-1 have been satisfied. Accordingly, Company A is granted an extension of 6 months from the date of the issuance of this ruling letter to file notification of the QSLOB election on form 5310-A with the appropriate IRS office.

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 which may be applicable thereto. This ruling does not constitute a determination that a separate line of business may be treated as satisfying the requirement of administrative scrutiny within the meaning of section 1.414(r)-6 of the I.T. Regulations.

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.

If you wish to inquire about this ruling, please contact. (ID # ) at ( ). Please address all correspondence to SE:T:EP:RA:T4 .

Sincerely yours,

Donzell H. Littlejohn, Manager,
Employee Plans Technical Group 4

Enclosures:

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Notice of Intention to Disclose, Notice 437