OCT 24 2008

Uniform Issue List: 401.00-00

T:EP:RA:T3

Attention: Vice President Tax

Legend:

Company M =

Company N =

State A =

Date 1 =

Dear :

This is in response to correspondence dated July 17, 2007, as supplemented by email correspondence sent January 25, February 1, and March 10, 2008, submitted on your behalf by your authorized representatives, regarding certain tax consequences of a merger.

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

Company M is a State A mutual life insurance company which qualifies as a life insurance company under section 816 of the Internal Revenue Code (Code) for federal income tax purposes. Company M offers credit life, credit disability, group life, and group disability insurance products as well as pension products and individual life and health insurance policies to credit unions and their members. As a mutual life insurance company, Company M is owned by its policyholder members.

Company N was a State A mutual life insurance company which qualified as a life insurance company under section 816 of the Code for federal income tax purposes. Prior to Date 1, Company N issued life insurance, annuity, and other insurance contracts that were either a part of a qualified plan within the meaning of section 401(a) of the

Code, or met the requirements of sections 403(b), 408, 408A or were issued under plans described in section 457 of the Code, to members of credit unions and the general public. Company N was owned by its policyholders who owned the mutual membership interest in Company N.

On Date 1, Company M and Company N were merged pursuant to chapter 521 of the Insurance Code of State A, with Company M surviving. Other than the receipt of proprietary interests in Company M, no consideration was paid or payable to Company N members as a result of the merger. The merger did not change the policies, premiums, or voting rights of the Company N members. The outstanding policies of Company N became policies of Company M by operation of law. Also, as part of the merger transaction, Company M agreed to protect the reasonable dividend expectations of certain participating policyholders based on the current and historical dividend payment practices of Companies M and N, and the reasonable expectations of the policyholders of universal life and variable universal life insurance policies.

The merger conformed the legal structure of Company M and Company N to the way they had been operating for a number of years and enabled even greater functional and financial integration than could have been achieved through affiliation alone because they are no longer two separate legal entities. The combined company has a larger capital base than either had on a stand-alone basis. The merger has reduced administration expenses. In addition, the combined entity is better able to absorb fluctuating results in lines of business as well as solve corporate identity and branding confusion among customers, regulators, rating agencies, and others that had resulted from the prior separate but affiliated structure. Also, as the credit union industry and insurance markets continue to evolve, the merger will permit greater flexibility to react to changes, whether by being able to access capital markets or in other ways.

Based on these facts and representations, you request the following letter rulings:

1. Pursuant to the merger, the assumption by Company M of liabilities under life insurance, annuity, and other insurance contracts issued by Company N will not cause such contracts, whose terms and conditions remain the same, to be treated as newly issued or otherwise cause a change in their treatment for purposes of sections 401(a), 403(b), 408, 408A, and 457 of the Code.

2. The merger will not result in an actual or deemed distribution in violation of section 401(k)(2)(B) of the Code or otherwise disqualify a qualified cash or deferred arrangement within the meaning of section 401(k).

3. With respect to policies issued by Company N and in force prior to the effective date of the merger that are tax-qualified under Code section 401(a) or meet the requirements of section 403(b) or section 408(b), the merger will not constitute a distribution from or a contribution to any of these policies, plans, or arrangements for federal income tax purposes.

4. The merger will not result in a distribution and, thus, will not result in:

(a) any gross income to the employee or to the beneficiary of a contract as a distribution from a qualified retirement plan under section 72 of the Code, prior to an actual receipt of some amount therefrom by such employee or by such beneficiary;

(b) any 10 percent additional tax under section 72(t) of the Code for premature distributions from a qualified retirement plan;

(c) any 6 percent or 10 percent excise tax under Code sections 4973 or 4979, respectively, for excess contributions to certain qualified retirement plans; or

(d) a designated distribution under section 3405(e)(1)(A) of the Code that is subject to withholding under section 3405(b) or (c).

Section 401(a) of the Code provides that a trust which forms part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust if all of the applicable requirements of this section are met.

Section 402(a) of the Code provides that, in general, any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 (relating to annuities).

Section 404 of the Code provides the general rules for the deduction for contributions of an employer to an employees' trust or annuity plan, and compensation under a deferred-payment plan, if the contributions are paid into a pension trust which is exempt under section 501(a).

Section 403(b)(1) of the Code provides, generally, that amounts contributed by certain tax-exempt employers to an annuity contract purchased from an insurance company by such an employer for an employee shall be excluded from the gross income of the employee for the taxable year of contribution and that the amount actually distributed to any distributee under such a contract shall be taxable to such distributee in the year distributed under section 72.

Section 403(b)(2) of the Code imposes a limit on the maximum amount which may be contributed to a tax-sheltered annuity described in section 403(b) on behalf of an employee in any taxable year.

Section 403(b)(10) of the Code provides that the provisions of section 403(b)(1) will not apply to an annuity unless requirements similar to the minimum distribution requirements of section 401(a)(9) are met with respect to such annuity.

Section 403(b)(11) of the Code provides that the provisions of section 403(b)(1) will not apply to an annuity unless, under the annuity, distributions attributable to contributions made pursuant to a salary reduction agreement may be paid only when the employee attains age 59 ½, has a severance from employment, dies, becomes disabled, or in the event of hardship. Distributions in the event of hardship may not include income attributable to salary reduction contributions. The distribution limitations of section 403(b)(11) do not apply to distributions attributable to assets held in the tax-sheltered annuity arrangement described in section 403(b) as of the close of the last year beginning before January 1, 1989. See P.L. 99-514 (the "Tax Reform Act of 1986") section 1123(e)(2), as amended by P.L. 100-647 ("TAMRA") section 101 1A(c)(11).

Section 408(b) of the Code defines an individual retirement annuity (IRA) as an annuity or endowment contract which is issued by an insurance company and which meets the requirements of section 408(b).

Section 408(d)(1) of the Code provides that amounts paid or distributed from an IRA shall be included in gross income by the payee or distributee in the manner provided in section 72.

Section 408(b)(3) imposes requirements similar to the distribution requirements of section 401(a)(9) on distributions of the entire interest of the contract owner.

Section 408(b)(2) of the Code establishes the annual limit on contributions and premiums to an IRA.

Section 219 of the Code permits an individual taxpayer to deduct from gross income amounts contributed to an IRA, subject to the maximum annual deduction limitations specified in section 219(b).

Section 408A of the Code provides the general rules for Roth IRAs. Section 408A(a) provides that, except as provided in this section, a Roth IRA shall be treated for purposes of this title in the same manner as an individual retirement plan.

Section 457 of the Code provides the general rules for deferred compensation plans of state and local governments and tax-exempt organizations.

Section 72(a) of the Code generally provides that gross income includes any amount received as an annuity under an annuity, endowment, or life insurance contract.

Section 72(c)(4) of the Code defines the annuity starting date, in part, as the first day of the first period for which an amount is received as an annuity under the annuity contract.

Section 72(e)(1)(A) of the Code provides that the provisions of section 72(e) shall apply to any amount which (i) is received under an annuity, endowment, or life insurance contract, and (ii) is not received as an annuity, if no provision of subtitle A (other than section 72(e)) applies with respect to such amount. Section 72(e)(1)(B) provides that for purposes of section 72, any amount received which is in the nature of a dividend or similar distribution shall be treated as an amount not received as an annuity.

Section 72(e)(2) of the Code provides that any amount which is received under an annuity, endowment, or life insurance contract and is not received as an annuity, (i) if received on or after the annuity starting date, shall be included in gross income, or (ii) if received before the annuity starting date, shall be included in gross income to the extent allocable to income on the contract and shall not be included in gross income to the extent allocable to the investment in the contract.

Section 72(e)(3) of the Code provides that an amount shall be treated as allocable to income on the contract to the extent that such amount does not exceed the excess of the cash value of the contract immediately before the amount is received, over the investment in the contract at the time.

Section 72(e)(5) of the Code provides, in part, that, with certain exceptions, an amount distributed from a trust described in section 401(a), which is exempt from tax under section 501(a), or is received from a contract purchased by a trust described in section 401(a), purchased as part of a plan described in section 403(a), or described in section 403(b), shall be included in gross income, but only to the extent it exceeds the investment in the contract.

Section 72(e)(6) of the Code provides that the investment in the contract, as of any date, is the aggregate amount of premiums or other consideration paid for the contract before such date, minus the aggregate amount received under the contract before such date, to the extent such amount was excludable from gross income under this subtitle or prior income tax laws.

Section 72(t)(1) of the Code provides, in part, that if any taxpayer receives any amount from a qualified retirement plan (as defined in section 4974(c)) prior to certain dates or the occurrence of certain events specified in section 72(t)(2), the taxpayer's tax for the taxable year shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income.

Section 401(k)(2)(B) of the Code provides that amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election (i) may not be distributable to participants or other beneficiaries earlier than (I) severance from employment, death, or disability, (II) upon termination of the plan as described in section 401(k)(10), (III) in the case of a profit-sharing or stock bonus plan, the attainment of age 59 ½, or (IV) in the case of contributions to a profit-sharing or stock bonus plan to which section 402(e)(3) applies, upon hardship of the employee, and (ii) will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years.

Section 4973(a)(3) of the Code, in pertinent part, imposes an excise tax equal to 6 percent of the amount of any excess contribution to an IRA (within the meaning of section 408(b)). This 6 percent tax applies for each taxable year of the IRA owner during which such excess contributions remain in such IRA, determined as of the end of the taxable year. An excess contribution under section 4973 is defined as a contribution in excess of the maximum amount that may be contributed to an IRA.

Section 4979 of the Code imposes an excise tax equal to 10 percent of the excess aggregate contributions under, in pertinent part, a plan described in section 401(a) which includes a trust exempt from tax under section 501(a), and any annuity contract described in section 403(b), for the plan year ending in such taxable year. Excess aggregate contributions under section 4979 are defined, in part, as the sum of the employer matching contributions and employee contributions actually made on behalf of highly-compensated employees, within the meaning of section 414(q), for a plan year in excess of the maximum amount of such contributions permitted under the actual contribution percentage test of section 401(m)(2) for such plan year.

Section 401(a)(9) of the Code requires, in part, that the entire interest of an employee under a qualified retirement plan be distributed, beginning no later than April 1 of the calendar year following the later of the calendar year in which the employee attains age 70 ½ or the calendar year in which the employee retires, over the life or life expectancy of the employee (or over the joint lives or joint life expectancy of the employee and a designated beneficiary). Section 401(a)(9)(C)(ii) provides that in the case of an IRA participant, and an employee who is a 5-percent owner (as defined in section 416) distributions must begin not later than April 1 of the calendar year following the calendar year in which the employee attains age 70 ½.

Section 1.401(a)(9)-1 of the Income Tax Regulations (regulations) generally describes the minimum required distribution rules applicable to plans qualified within the meaning of section 401(a) of the Code, annuities described in section 403(b), and IRAs described in section 408. Section 1.401(a)(9)-2 of the regulations provides the rules governing distributions commencing within a plan participant's or annuitant's lifetime. Section 1.401(a)(9)-3 provides the rules governing required distributions with respect to a plan participant or annuitant who dies prior to his required beginning date. Section 1.401(a)(9)-6 provides the rules governing required distributions from defined benefit plans and annuity contracts.

Section 3405(d)(1) of the Code requires the payor of a "designated distribution", within the meaning of section 3405(e)(1), to withhold certain amounts from such distributions. In general, absent an election under section 3405(b)(2) made by a recipient, section 3405 requires the payor to withhold on distributions from employer deferred compensation plans, IRAs, and commercial annuities. Section 3405(e)(1)(B)(ii) provides that the term "designated distribution" does not include the portion of a distribution or payment which it is reasonable to believe is not includible in gross income. Section 3405(b) provides that the payor of any nonperiodic distribution (as defined in subsection (e)(3)) shall withhold from such distribution an amount equal to 10 percent of such distribution. Section 3405(c) provides that in the case of an "eligible rollover distribution", as defined in section 3405(c)(3), the payor of such distribution shall withhold from such distribution an amount equal to 20 percent of such distribution.

Central to our analysis of your submitted ruling requests is the question of to what extent, if any, membership interests in a mutual insurance company are associated with the stated plans.

As a general rule, all interests, dividends, capital growth, stock distributions, or any other change in the nature of assets, through reorganization, recapitalization, or otherwise, are held as part of the tax-deferred solution, i.e., the tax-sheltered annuity, the IRA, and the qualified plans, until the assets are distributed. If a change in the nature of the assets results in an increase in value, such increase would be taxable to the recipient only upon distribution.

Any membership interests in a mutual insurance company which arise from the purchase of an insurance contract are inextricably tied to the contract from the time of purchase. These membership interests are created by operation of state law solely as a result of the policyholder's acquisition of the underlying contract from a mutual insurance company and cannot be transferred separately from that contract. The membership interests have no determinable value apart from the insurance contract itself, both prior to and after the reorganization. Further, if the insurance contract is surrendered by the policyholder or, in the event an insurance contract is terminated by payment of benefits to the contract beneficiary, these membership interests cease to exist, having no continuing value. The membership rights associated with the tax-qualified retirement contracts are acquired as a direct result of tax-favored payments to a mutual insurance company. These membership interests cannot be obtained by any purchase separate from the issuance of an insurance contract. In view of the foregoing, such interests are part of the tax-qualified retirement contracts, created pursuant to sections 401(a), 403(b), 408(b), 408A, and 457 of the Code respectively.

After the merger, the membership rights formerly held by Company N policyholders became membership rights in Company M. However, the merger did not change the contractual provisions of the policies held by these policyholders, and it did not reduce or alter the guaranteed benefits, values, and rights of previous Company N policyholders.

The merger transaction did not constitute a distribution to the annuitants since the merger did not increase the accumulated value of the annuity contracts. Even if the merger resulted in increased amounts in the policies, such amounts would be treated, for purposes of Code sections 401(a)(9), 403(b)(11), and 408(b)(3), in the same manner as any other return of, or return on, an investment within the arrangements described above, and are not regarded as having been received by the policyholder.

Similarly, under sections 402(a), 403(b)(1), and 408(d) of the Code, only amounts paid or distributed under the applicable plans will be included in the gross incomes of the distributees under the rules of section 72. Section 72(e), dealing with the tax treatment of amounts not received as an annuity, provides for the inclusion of such amounts when received by the distributee. In this case, no amount is received by or includible in the gross income of any policyholder under such plans. In addition, as no amounts were distributed as a result of the merger, nor received by the tax-qualified retirement policyholders outside the plans, the additional 10 percent tax imposed by section 72(t) does not apply.

In pertinent parts, section 4979 of the Code imposes excise taxes on certain excess contributions made to plans described in sections 401(a) and 403(b), and section 4973(a) imposes excise taxes on certain excess contributions made to IRAs. Because no increase in the value of the accounts occurred as a result of the merger, there is neither a distribution from, nor a contribution to, such accounts. Distributions from plans qualified under section 401(a) must be made pursuant to section 401(a)(9). Sections 403(b)(10) and 408(b)(3) require distributions, under the respective plans, in compliance with rules similar to the minimum distribution requirements included in section 401(a)(9) and applicable to qualified plans under section 401(a) of the Code. Section 401(a)(9) and applicable regulations issued thereunder, contain the criteria for determining the minimum distribution amount for any year for which such minimum distribution is required. The minimum distribution amount is based in part of the total value of the retirement benefit.

It has been determined that under the merger, amounts were neither contributed to, nor distributed from, the plans. Similarly, amounts were neither contributed to, nor distributed from, the underlying contracts. The merger did not, in any way, cause a distribution to the policyholders or a contribution on their behalf.

For purposes of section 401(k)(2)(B) of the Code, which prohibits the distribution of contributions made pursuant to a qualified cash or deferred arrangement prior to certain stated events, the merger did not result in distributions from the plans which are subject to such limitations.

Section 3405(d) of the Code requires a payor to withhold income taxes on certain "designated distributions" as defined in section 3405(e)(1), including distributions from or under an employer deferred compensation plan, an individual retirement plan, or a commercial annuity. Since the merger did not result in the distribution of any amounts to individual policyholders, within the meaning of section 3405(e)(1), the merger did not give rise to any requirement to withhold under section 3405.

Accordingly, with respect to your ruling requests, we conclude that:

1. Pursuant to the merger, the assumption by Company M of liabilities under life insurance, annuity, and other insurance contracts issued by Company N will not cause such contracts, whose terms and conditions remain the same, to be treated as newly issued or otherwise cause a change in their treatment for purposes of sections 401(a), 403(b), 408(b), 408A, and 457 of the Code.

2. The merger will not result in an actual or deemed distribution in violation of section 401(k)(2)(B) of the Code or otherwise disqualify a qualified cash or deferred arrangement within the meaning of section 401(k).

3. With respect to policies issued by Company N and in force prior to the effective date of the merger that are tax-qualified under Code section 401(a) or meet the requirements of section 403(b) or section 408(b), the merger will not constitute a distribution from or a contribution to any of these policies, plans, or arrangements for federal income tax purposes.

4. The merger will not result in a distribution and, thus, will not result in:

(a) any gross income to the employee or to the beneficiary of a contract as a distribution from a qualified retirement plan under section 72 of the Code, prior to an actual receipt of some amount therefrom by such employee or by such beneficiary;

(b) any 10 percent additional tax under section 72(t) of the Code for premature distributions from a qualified retirement plan;

(c) any 6 percent or 10 percent excise tax under Code sections 4973 or 4979, respectively, for excess contributions to certain qualified retirement plans; or

(d) a designated distribution under section 3405(e)(1) of the Code that is subject to withholding under section 3405(b) or (c).

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 letter expresses no opinion as to whether the plans, annuity contracts, IRAs, Roth IRAs, and 403(b) and 457 arrangements described herein satisfy or satisfied the requirements of sections 401(a), 403(b), 408, 408A, or 457 of the Code and assumes that they do and will in accordance with representations made to that effect.

This letter is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representatives. If you wish to inquire about this ruling, please contact , I.D. # , at . Please address all correspondence to

Sincerely yours,

Frances V Sloan

Employee Plans Technical Group

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