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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

201427024

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UIL No. 402.07-00

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Legend:

Company A = xxxxxxxxxxxxxxxxx

Company B = xxxxxxxxxxxxxxxxx

Company C = xxxxxxxxxxxxxxxxx

Plan X = xxxxxxxxxxxxxxxxx

Plan Y = xxxxxxxxxxxxxxxxx

State M = xxxxxxxxxxxxxxxxx

Date 1 = xxxxxxxxxxxxxxxxx

Date 2 = xxxxxxxxxxxxxxxxx

Date 3 = xxxxxxxxxxxxxxxxx

Date 4 = xxxxxxxxxxxxxxxxx

Date 5 = xxxxxxxxxxxxxxxxx

Date 6 = xxxxxxxxxxxxxxxxx

Date 7 = xxxxxxxxxxxxxxxxx

Dear xxxxxxxxxx:

This is in response to your request dated April 9, 2013, submitted, by your authorized representative, as supplemented by correspondence dated June 7, 2013, and January 16, 2014, on behalf of Company A, in which you request rulings regarding the federal tax treatment under sections 402(e), 402(j), 401(a)(35) and 404(k) of the Internal Revenue Code (the "Code") of the shares of common stock of Company A that were acquired by Plan Y and shares of common stock of Company B that were acquired by Plan X, each pursuant to a series of transactions under sections 355 and 368(a)(1)(D) of the Code and of the dividends to be paid in respect of Company A shares and Company B shares that are each held by both Plan X and Plan Y.

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

Company A conducts business through Company C, a State M corporation, and various entities owned directly and indirectly by Company C. Company A, also a State M corporation, was formed as a holding company for Company C to facilitate a public offering of Company A's stock. Corporate transactions were effected on Date 1 to spin-off Company B from Company A.

Company C maintains Plan X, a profit sharing plan intended to be qualified under section 401(a) of the Code and whose underlying trust is intended to be tax exempt under section 501(a) of the Code. Plan X includes a cash or deferred arrangement intended to be qualified under section 401(k) of the Code and a stock bonus plan and an employee stock ownership plan intended to qualify under sections 401(a) and 4975(e)(7) of the Code. Plan X is the subject of a favorable determination letter dated Date 3, that Plan X is qualified under section 401(a) of the Code and its trust is exempt from tax under section 501(a) of the Code. Company C uses the Form 5500 series of return on a calendar year basis to report Plan X.

The "Company Stock Fund" of Plan X has included two subaccounts invested in Company A Shares, the "Closed Stock Subaccount" and the "Common Stock Subaccount." The Company Stock Fund subaccounts are unitized stock funds which are invested primarily in Company A shares but which also contain small amounts of cash and/or cash equivalents to facilitate distribution and fund exchanges. The Closed Stock Subaccount had previously been invested in Class A preferred shares of Company A until the Class A preferred shares were reclassified as Company A shares on Date 4. Participants may transfer amounts in their Plan X accounts into and out of the Common Stock Subaccount at any time. Effective Date 5, no transfers into the Closed Stock Subaccount are permitted. Participants may transfer amounts out of the Closed Stock Subaccount into any other investment fund under Plan X at any time.

The Company Stock Fund is designated an employee stock ownership plan intended to qualify under sections 401(a) and 4975(e)(7) of the Code which by its terms is invested primarily in qualifying employer securities described in section 409(l) of the Code.

Plan X participants may receive a distribution from Plan X in a single lump sum and may elect to receive all or any part of the distribution in the form of Company A shares.

The Company Stock Fund employs unit accounting. A company stock fund using the unit accounting method is administered and keeps records in the same manner as an investment fund registered under the Investment Company Act of 1940 (e.g., a mutual fund). The Company Stock Fund invests primarily in Company A shares (up to 99.5% of the value of the Company Stock Fund), but maintains a small cash position (approximately 0.5% of the value of the Company Stock Fund) in a money market fund. Participants who invest in the Company Stock Fund own units of the fund. The unit price, also known as the Net Asset Value, of the Company Stock Fund represents the value of a single unit in the fund.

Plan X uses the average cost method set forth in section 1.402(a)-1(b)(2)(ii)(d)(1) of the Income Tax Regulations ("Regulations") to determine the cost basis of Company A shares contributed to Plan X. An average cost per unit is determined by adding up the total cost of all units a participant has credited to him in the Closed Stock Subaccount or the Common Stock Subaccount, as appropriate, and dividing the total cost by the total number of units credited to the participant.

On Date 1, Company B established Plan Y, which is a profit sharing plan intended to be qualified under section 401(a) of the Code and whose underlying trust is intended to be tax exempt under section 501(a) of the Code, and which includes a cash or deferred arrangement intended to be qualified under section 401(k) of the Code, and a stock bonus plan and an employee stock ownership plan intended to be qualified under sections 401(a) and 4975(e)(7) of the Code. On Date 7, Company B submitted Plan Y for an initial determination that the plan is qualified under section 401(a) of the Code and its trust is tax exempt under section 501(a) of the Code. Company B intends to use the Form 5500 series of return on a calendar year basis to report Plan Y.

Plan Y has substantially the same provisions as Plan X with regard to the establishment and maintenance of one or more common stock funds holding Company B shares and Company A shares, including similar provisions providing for transfers into and out of such funds, as well as provisions providing for the timing and form of distributions similar to those provided under Plan X.

Company B was a direct wholly owned subsidiary of Company A that was created in contemplation of the corporate reorganization of Company A. Company A spun off Company B by distributing Company B shares to Company A shareholders, pro rata, in a corporate reorganization under sections 368(a)(1)(D) and 355 of the Code, effective Date 1 (the "Spin-Off"). No fractional Company B Shares were distributed in the Spin-Off. Instead, all fractional Company B shares that Company A shareholders otherwise would have been entitled to receive were aggregated by a transfer agent and, as soon as practicable following the effective time of the Spin-Off, were sold at the prevailing price on the New York Stock Exchange. Any Company A shareholders entitled to receive a fractional Company B share were entitled to receive a cash payment in an

amount equal to the shareholder's proportionate interest in the net proceeds from the open market sale.

On Date 6, Company C caused the accounts (including any outstanding loan balances) in Plan X attributable to Company B employees who would participate in Plan Y and all of the assets in Plan X related thereto to be transferred in-kind to Plan Y ("Plan X Assets"), and Company B caused Plan Y to accept the Plan X Assets. The transfer of assets was conducted in accordance with section 414(l) of the Code, section 1.414(l)-1 of the Regulations, and section 208 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

Following the transfer of the Plan X assets attributable to Company B employees who would participate in Plan Y as described in the preceding paragraph, Plan Y has maintained a fund invested in Company B shares and a fund invested in Company A shares. Likewise, Plan X has maintained the Company Stock Fund and currently maintains a fund invested in Company B shares which contains the shares of Company B shares that the Plan X trust received in connection with the Spin-Off.

Following the Spin-Off, Company A and Company C on the one hand, and Company B on the other hand, were no longer part of the same controlled group of corporations within the meaning of sections 414(b), (c), (m) or (o) of the Code.

On Date 2, Company A received a private letter ruling (subject to certain caveats) that the Spin-Off would qualify for nonrecognition of gain or loss to the shareholders of Company A under section 355(a)(1) of the Code and that the aggregate basis of the Company A shares and the Company B shares (including any fractional interest in the Company B shares) in the hands of shareholders of Company A shares immediately after the Spin-Off will be the same as the aggregate basis of the Company A shares held by such shareholders immediately before the Spin-Off, allocated in proportion to the fair market value of each in accordance with section 1.358-2(a)(2) of the Regulations.

Based on the above facts and representation, you request the following rulings:

1. The Company B shares acquired by Plan X as a result of the Spin-Off, will be treated as "securities of the employer corporation" for purposes of section 402(e)(4) of the Code and Revenue Ruling 73-29, 1973-1 C.B. 198, and the net unrealized appreciation in such shares may be excluded from gross income upon distribution to a participant or beneficiary, to the extent provided in section 402(e)(4) of the Code.

2. Company A shares held by Plan Y will be treated as "securities of the employer corporation" for purposes of section 402(e)(4) of the Code and Revenue Ruling 73-29, 1973-1 C.B. 198, and the net unrealized appreciation in such shares may be excluded from gross income upon distribution to a participant or beneficiary, to the extent provided in section 402(e)(4) of the Code.

3. For purposes of determining net unrealized appreciation under section 402(e) of the Code, the basis of the Company A shares and the Company B shares held by Plan X immediately after the Spin-Off will be determined by allocating the basis of the Company A shares held by Plan X for the benefit of Plan X participants immediately before the Spin-Off between Company A shares and Company B shares in proportion to their relative fair market values, in accordance with the rules of section 358 of the Code.

4. For purposes of determining net unrealized appreciation under section 402(e) of the Code, the basis of the Company A shares and the Company B shares held by Plan Y for the benefit of Plan Y participants following the Spin-Off will be determined by allocating the basis of the Company A shares held by Plan X immediately before the Spin-Off between the Company A shares and Company B shares in proportion to their relative fair market values, in accordance with the rules of section 358 of the Code.

5. To the extent Company A shares and Company B shares are "securities of the employer corporation" with respect to Plan X or Plan Y, as applicable, for purposes of section 402(e)(4) of the Code, the 90-day period under section 402(j)(2)(B) of the Code will commence upon the actual exchange, sale or other disposition of such Company A shares or Company B shares and not upon the date of the Spin-Off, and holders of Company A shares or Company B shares in Plan X or Plan Y may engage in any number of exchanges that are described in section 402(j)(2)(B) of the Code.

6. In the event that Plan X (i) exchanges Company B shares received pursuant to the Spin-Off for Company A shares, or (ii) sells or disposes of such Company B shares and reinvests the proceeds in Company A shares within 90 days following such exchange, sale or other disposition (or such longer period as the Secretary of the Treasury may prescribe), such exchange, sale or other disposition will constitute an exchange of "securities of the employer corporation" for purposes of section 402(j)(2) of the Code so that the determination of net unrealized appreciation shall be made without regard to such exchange or disposition.

7. To the extent that Plan X exchanges Company B shares for Company A shares or sells or disposes of Company B shares and reinvests the proceeds in Company A shares as described in 6, above, the basis of the replacement Company A shares for purposes of determining net unrealized appreciation under section 402(e) of the Code will be equal to the basis of Company B shares.

8. In the event that Plan Y (i) exchanges Company A shares held by Plan Y for Company B shares, or (ii) sells or disposes of such Company A shares and reinvests the proceeds in Company B shares within 90 days following such exchange, sale or other disposition (or such longer period as the Secretary of the Treasury may prescribe), such exchange, sale or other disposition will constitute an exchange of "securities of the employer corporation" for purposes of section

402(j)(2) of the Code so that the determination of net unrealized appreciation shall be made without regard to such exchange or disposition.

9. To the extent that Plan Y exchanges Company A shares for Company B shares or sells or disposes of Company A shares and reinvests the proceeds in Company B shares as described in 8, above, the basis of the replacement Company B shares for purposes of determining net unrealized appreciation under section 402(e) of the Code will be equal to the basis of the Company A shares.

10. The reinvestment restrictions to be placed on the Company A shares by Plan Y and on the Company B shares by Plan X following the Spin-Off will not cause Plan X or Plan Y to violate section 401(a)(35) of the Code.

11. With respect to the Company A shares acquired by Plan X through the disposition of Company B shares and the reinvestment in Company A shares, dividends paid in respect of such Company A shares will be deductible by Company A under section 404(k) of the Code to the same extent that dividends were deductible by Company A under section 404(k) of the Code with respect to original Company A shares which created a right to Company B shares as a result of the Spin-Off.

12. With respect to Company B shares acquired by Plan Y as a result of the Spin-Off and with respect to Company B shares acquired by Plan Y through the disposition of Company A shares and reinvestment in Company B shares after the Spin-Off, dividends paid in respect of such Company B shares will be deductible by Company B under section 404(k) of the Code to the same extent that dividends with respect to the original Company A shares were deductible by Company A under section 404(k) of the Code and in respect of which Company B shares were distributed in connection with the Spin-Off.

13. With respect to the Company A shares held in Plan Y after the Spin-Off and prior to the disposition by Plan Y of such Company A shares and reinvestment in Company B shares, dividends paid on such Company A shares will be deductible by Company A under section 404(k) of the Code to the same extent that dividends were deductible by Company A under section 404(k) of the Code with respect to the original Company A shares held by Plan X before the transfer to Plan Y, and with respect to the Company B shares held in Plan X after the Spin-Off and prior to the disposition by Plan X of such Company B shares and reinvestment in Company A shares, dividends paid on such Company B shares will be deductible by Company B under section 404(k) of the Code to the same extent that dividends are deductible by Company B under section 404(k) of the Code with respect to the Company B shares held by Plan Y.

With respect to your ruling requests:

Section 402(e)(4)(A) of the Code provides in pertinent part that, for purposes of sections 402(a) and 72 of the Code, in the case of a distribution other than a lump sum distribution, the amount actually distributed to any distributee from a trust described in section 402(a) of the Code shall not include any net unrealized appreciation in securities of the employer corporation attributable to amounts contributed by the employee.

Section 402(e)(4)(B) of the Code states in pertinent part that, for purposes of sections 402(a) and 72 of the Code, in the case of any lump sum distribution which includes securities of the employer corporation, there shall be excluded from gross income the net unrealized appreciation attributable to that part of the distribution which consists of securities of the employer corporation.

Section 402(e)(4)(E)(ii) of the Code provides in pertinent part, that for purposes of section 402(e) of the Code, the term "securities of the employer corporation" includes securities of a parent or subsidiary corporation (as defined in subsections (e) and (f) of section 424 of the Code) of the employer corporation.

Section 1.402(a)-1(b)(2)(i) of the Regulations provides that the amount of net unrealized appreciation in securities of the employer corporation that are distributed by the trust is the excess of the market value of such securities at the time of distribution over the cost or other basis of such securities to the trust.

Section 1.402(a)-1(b)(2)(ii) of the Regulations sets forth the manner in which the cost or other basis to the trust of a distributed security of the employer corporation is calculated for the purpose of determining the net unrealized appreciation on such security.

Section 1.402(a)-1(b)(3) of the Regulations sets forth certain special rules for determining the net unrealized appreciation on securities of the employer corporation that are attributable to employee contributions.

Under section 1.402(a)-1(d)(2) of the Regulations, neither employee salary deferrals made pursuant to a cash or deferred arrangement nor matching contributions are treated as employee contributions for purposes of section 402(e)(4) of the Code.

In Revenue Ruling 73-312, 1973-2 C.B. 142, a corporation merged into a successor corporation pursuant to an agreement providing for the exchange of the predecessor corporation's stock (including stock held by the predecessor corporation's qualified trust) for stock of the successor corporation, and the Service ruled that, due to the fact that the stock of the predecessor corporation was held or acquired by the predecessor corporation's exempt trust while the affected employees were covered under the predecessor's plan, the mere conversion of the stock of the predecessor corporation into stock of the successor corporation did not change the status of the stock as "securities of the employer" within the meaning of section 402(a) of the Code (the predecessor to section 402(e)(4)(E)(ii) of the Code).

In Revenue Ruling 73-29, 1973-1 C.B. 198, securities of an employer corporation held by its qualified plan were transferred to the qualified trust of an unrelated corporation when the first employer sold part of its business and transferred some of its employees to an unrelated corporation. It was held that shares of stock of the seller corporation distributed from the buyer's qualified trust to employees of the buyer corporation who were former employees of the seller corporation were securities of the employer corporation and will always be securities of the employer corporation even after those shares and the employees in whose accounts they were held were transferred to an unrelated corporation.

In Revenue Ruling 80-138, 1980-1 C.B. 87, the Service held that the transfer of employer securities from an exempt trust maintained by a parent corporation and its subsidiary to a newly established exempt trust of the subsidiary will not change the basis of the securities for purposes of computing net unrealized appreciation in the securities because the transfer is not a taxable event.

Section 402(j) of the Code provides, in pertinent part, that for the purposes of section 402(e)(4) of the Code, in the case of any transaction in which either; (A) the plan trustee exchanges the plan's securities of the employer corporation for other such securities, or, (B) the plan trustee disposes of securities of the employer corporation and uses the proceeds of such disposition to acquire securities of the employer corporation within 90 days (or such longer period as the Secretary of the Treasury may prescribe), the determination of net unrealized appreciation shall be made without regard to such transaction.

Section 401(a)(35) of the Code provides that a trust which is a part of an "applicable defined contribution plan" is not a qualified trust under section 401(a) of the Code unless the plan satisfies the diversification requirements of sections 401(a)(35)(B), (C) and (D) of the Code.

Sections 401(a)(35)(B) and (C) of the Code generally provide that in the case of the portion of an applicable individual's account attributable to employee contributions, elective contributions and employer contributions (with regard to participants who meet certain requirements) which is invested in employer securities, the participant must be able to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options that meet the requirements of subsection (D).

Section 401(a)(35)(D)(ii)(II) of the Code provides that a plan is not permitted to impose restrictions or conditions with respect to the investment of employer securities that are not imposed on the investment of other assets of the plan.

Section 1.401(a)(35)-1(e)(I)(ii)(A) of the Regulations provides that the prohibition on restrictions or conditions with respect to the investment of employer securities applies to any direct or indirect restriction on an individual's right to divest an investment in employer securities that is not imposed on an investment that is not employer securities,

as well as a direct or indirect benefit that is conditioned on investment in employer securities.

Section 1.401(a)(35)-1(e)(ii)(B) of the Regulations provides that a plan imposes an indirect restriction on an individual's right to divest an investment in employer securities if, for example, the plan provides that a participant who divests his or her account balance with respect to the investment in employer securities is not permitted for a period of time thereafter to reinvest in employer securities.

Section 1.401(a)(35)-1(e)(ii)(C) of the Regulations provides, however, that a plan does not impose an impermissible restriction or condition merely because it provides that an individual may not reinvest divested amounts in the same employer securities account but is permitted to invest such divested amounts in another employer securities account where the only relevant difference between the separate account is the section 402(e)(4) of the Code cost (or other basis) of the trust in the shares held in each account.

Section 401(a)(35)(E)(i) of the Code provides in pertinent part that an "applicable defined contribution plan" is a defined contribution plan that holds any publicly traded employer security.

Section 401(a)(35)(E)(ii) of the Code provides that the term "applicable defined contribution plan" does not include an employee stock ownership plan if; (I) there are no contributions held in such plan subject to sections 401(k) or (m) of the Code, and, (II) such plan is a separate plan for purposes of section 414(l) of the Code with respect to any defined benefit plan or defined contribution plan maintained by the same employer or employers.

Section 401(a)(35)(G)(iii) of the Code provides that the term "employer security" has the meaning given by section 407(d)(1) of ERISA.

Section 401(a)(35)(G)(v) of the Code provides that the term "publicly traded employer securities" means employer securities which are readily tradable on an established securities market.

Section 1.401(a)(35)-1(f)(5)(ii) of the Regulations provides in pertinent part that a security is "readily tradable on an established securities market" if the security is traded on a national securities exchange that is registered under section 6 of the Securities Exchange Act of 1934.

Section 407(d)(1) of ERISA defines the term "employer security" as a security issued by an employer of employees covered by the plan or by an affiliate of such employer.

Section 407(d)(7) of ERISA provides that a corporation is an affiliate of an employer if it is a member of a controlled group of corporations (determined by applying section 1563(a) of the Code, except substituting 50 percent for 80 percent) of which the employer is a member.

Section 404(k) of the Code generally permits a corporation to deduct the amount of any applicable dividend paid in cash by the corporation during the taxable year with respect to applicable employer securities which are held on the record date for such dividend by an employee stock ownership plan maintained by the corporation paying the dividend or any other member of the same controlled group.

Section 404(k)(2)(A) of the Code provides that an "applicable dividend" means any dividend which, in accordance with the plan provision: (i) is paid in cash to the participants in the plan or their beneficiaries; (ii) is paid to the plan and is distributed in cash to participants in the plan or their beneficiaries not later than 90 days after the close of the plan year in which paid; (iii) is, at the election of such participants or their beneficiaries, (I) payable as provided in clause (i) or (ii), or (II) paid to the plan and reinvested in qualifying employer securities; or, (iv) is used to make payments on a loan described in subsection (a)(9) the proceeds of which were used to acquire the employer securities (whether or not allocated to participants) with respect to which the dividend is paid.

Section 404(k)(3) of the Code provides that the term "applicable employer securities" means with respect to any dividend, employer securities which are held on the record date for such dividend by an employee stock ownership plan which is maintained by; (A) the corporation paying such dividend, or (B) any other corporation which is a member of a controlled group of corporations (within the meaning of section 409(l)(4) of the Code) which includes such corporation.

Section 404(k)(6)(A) of the Code provides that the term "employer securities" has the same meaning given such term by section 409(l) of the Code. Under section 409(l)(l) of the Code, the term "employer securities" generally means common stock issued by the employer (or by a corporation which is a member of the same controlled group) which is readily tradable on an established securities market, and under section 409(l)(4) of the Code, the term "controlled group of corporations" generally has the meaning given to such term by section 1563(a) of the Code (determined without regard to subsections (a)(4) and (e)(3)(C) of section 1563 of the Code).

Section 404(k)(4) of the Code states that the deduction provided under section 404(k)(1) of the Code is allowable in the taxable year of the corporation in which the dividend is paid or distributed to a participant or his beneficiary.

With respect to ruling request 1, Company B was a wholly-owned subsidiary of Company A before the Spin-Off. Section 424(f) of the Code provides in part that the term "subsidiary corporation" means any corporation (other than the employer corporation) in an unbroken chain of corporations beginning with the employer

corporation if, at the time of the granting of the option, each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50 percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. Section 402(e)(4)(E)(ii) of the Code provides that the term "securities of the employer corporation" includes securities of a parent or subsidiary corporation (as defined in subsections (e) and (f) of section 424 of the Code) since Company B was a wholly owned subsidiary of the employer corporation" before the Spin-Off, Company B shares constitute "securities of the employer corporation" within the meaning of section 402(e)(4)(E) of the Code.

Pursuant to and simultaneously with the Spin-Off, Company B will cease to be a subsidiary of Company A. However, Company B shares distributed to Plan X pursuant to the Spin-Off represents part of the pre Spin-Off value of the Company A shares.

The distribution of the Company B shares with respect to the Company A shares held by Plan X is similar to the facts in Revenue Ruling 73-29 since the securities of an employer corporation (in this case the Company B shares) held by the qualified plan of a related corporation (in this case Company A) ultimately held by the qualified trust of an unrelated corporation (Company A, after the Spin-Off was consummated). In Revenue Ruling 73-29, shares of stock of the seller corporation transferred to the buyer's qualified trust as part of the transaction and then distributed from the buyer's qualified trust to employees of the buyer corporation who were former employees of the seller corporation were securities of the employer corporation at the time contributed and remained employer securities even after those shares and the employees in whose account they were held were transferred to an unrelated corporation.

The Company B shares that were received by Plan X in the Spin-Off remain securities of the employer corporation for purposes of section 402(e)(4) of the Code following the Spin-Off and, accordingly, continue to be treated as "securities of the employer corporation" for purposes of section 402(e)(4) of the Code in accordance with Revenue Ruling 73-29. Since Company B shares are "securities of the employer corporation" with respect to Plan X, the net unrealized appreciation in such shares will be excludible from gross income upon distribution to a participant or beneficiary, in a lump sum distribution, to the extent provided in section 402(e)(4) of the Code and section 1.402(a)-1(b)(2) of the Regulations.

Similarly, in the case of a distribution to a participant or beneficiary in a form other than lump sum, the net unrealized appreciation in such shares will be excludible to the extent such shares are attributable to amounts contributed by the employee to the extent provided in section 402(e)(4) of the Code and sections 1.402(a)-1(b)(2) and 1.402(a)-1(b)(3) of the Regulations.

With respect to ruling request 2, Plan Y received Company A shares and Company B shares by means of a trust to trust transfer after the Spin-Off. Company A shares and Company B shares transferred to Plan Y following the Spin-Off represented the combined value of Company A shares held by Plan X immediately before the Spin-Off

in respect of the transferred Plan X Assets. Before the Spin-Off, Company A shares held in Plan X constituted "securities of the employer corporation" within the meaning of section 402(e)(4)(E) of the Code with respect to Company B since Company B was a subsidiary of Company A within the meaning of section 424(f) of the Code before the Spin-Off.

In Revenue Ruling 80-138, the Service held that the transfer of employer securities from an exempt trust maintained by a parent corporation and its subsidiary to a newly established exempt trust of the subsidiary does not change the basis of the securities for purposes of computing net unrealized appreciation in the securities. Similarly here, the separation of Company B from Company A did not change the basis of the Company A shares and the Company B shares held by Plan Y following the Spin-Off. Although Company A and Company B are no longer members of the same controlled group of corporations as a result of the Spin-Off, in accordance with Revenue Ruling 73-29 and Revenue Ruling 80-138, Company A shares and Company B shares continue to be considered securities of the employer corporation for purposes of section 402(e) of the Code. As in Revenue Ruling 73-29, the Company A shares held in Plan Y remain securities of the employer corporation for purposes of section 402(e)(4) of the Code following the Spin-Off.

Accordingly, Company A shares and Company B shares held by Plan Y are treated as "securities of the employer corporation" for purposes of excluding net unrealized appreciation from income under section 402(e) of the Code.

With respect to ruling request 3 and 4, on Date 2, Company A received a private letter ruling (subject to certain caveats) that the Spin-Off would qualify for nonrecognition of gain or loss to the shareholders of Company A under section 355(a)(1) of the Code and that the aggregate basis of the Company A shares and the Company B shares (including a fractional interest in the Company B shares) in the hands of shareholders of Company A shares immediately after the Spin-Off will be the same as the aggregate basis of the Company A shares held by such shareholders immediately before the Spin-Off, allocated in proportion to the fair market value of each in accordance with section 1.358-2(a)(2) of the Regulations. Therefore, the Service has ruled that the Spin-Off is not taxable to the shareholders of Company B under section 355 of the Code.

Section 1.402(a)-1(b)(2)(i) of the Regulations provides that the amount of net unrealized appreciation in securities of the employer corporation that are distributed by the trust is the excess of the market value of such securities at the time of the distribution over the cost or other basis of such securities to the trust.

Accordingly, for purposes of determining net unrealized appreciation under section 402(e) of the Code, the basis of Company A shares and Company B shares held by Plan X immediately after the Spin-Off is determined by allocating the combined basis of Company A shares held by Plan X for the benefit of Plan X participants immediately before the Spin-Off between Company A shares and Company B shares in proportion to their relative fair market values, in accordance with the rules of section 358 of the Code.

Likewise, the basis of the Company A shares and the Company B shares received by Plan Y for the benefit of the Plan Y participants by means of a trust to trust transfer discussed in the Date 2 private letter ruling mentioned above, is determined by allocating the basis of the Company A shares held in respect of the Plan Y participants between the Company A shares and the Company B shares held in respect of the Plan Y participants immediately following the Spin-Off in proportion to their relative fair market values, in accordance with the rules of section 358 of the Code.

With respect to ruling request 5, section 402(j) of the Code provides, in pertinent part, that for purposes of section 402(e)(4) of the Code, in the case of any transaction in which either; (i) the plan trustee exchanges the plan's securities of the employer corporation for other such securities, or, (ii) the plan trustee disposes of the plan's securities of the employer corporation and uses the proceeds of such disposition to acquire other securities of the employer corporation within 90 days (or such longer period as the Secretary of the Treasury may prescribe), the determination of net unrealized appreciation shall be made without regard to such transaction.

Pursuant to our conclusion with respect to ruling requests 1 and 2, Company B shares in Plan X and Company A shares in Plan Y are treated as "securities of the employer corporation." Thus, Plan X's exchange with Plan Y of its Company B shares for Plan Y's Company A shares would be a disposition of "securities of the employer corporation" for purposes of section 402(j) of the Code.

Additionally, if Plan Y disposes of its Company A shares at any time following the Spin-Off and reinvests the proceeds in Company B shares within 90 days following the disposition, or if Plan X disposes of its Company B shares at any time following the Spin-Off and reinvests the proceeds in Company A shares within 90 days following the disposition, then the disposition would be a disposition of the "securities of the employer corporation" because at all times following the Spin-Off, Company A shares and Company B shares will both remain "securities of the employer corporation" with respect to both Company A and Company B. Because the Company A shares held by Plan Y and the Company B shares held by Plan X will all constitute "securities of the employer corporation" upon and immediately following the Spin-Off, the 90-day reinvestment period described in section 402(j)(2)(B) of the Code which is only triggered by an exchange, sale or disposition, can commence only upon actual exchange, sale or other disposition of Company A shares or Company B shares following the Spin-Off. The Spin-Off is not in and of itself an exchange, sale or other disposition of the shares. Therefore, the 90-day period under section 402(j)(2)(B) of the Code can only commence upon the actual sale, exchange, or other disposition of such Company A shares or Company B shares and not upon the date of the Spin-Off, and each actual sale, exchange or other disposition of Company A shares or Company B shares triggers its own 90-day period, such that holders of Company A shares or Company B shares in Plan X and/or Plan Y may engage in multiple sales, exchanges or dispositions, with each transaction triggering its own 90-day period under section 402(j)(2)(B) of the Code.

With respect to ruling requests 6 through 9, Company B shares received by Plan X and Company A shares received by Plan Y following the Spin-Off are "securities of employer corporation", as defined in section 402(e)(4)(E) of the Code, for purposes of section 402 of the Code, as each are discussed in detail in ruling request 1, 2, 5, and 7 respectively, above. Section 402(j)(1) of the Code provides that "for purposes of section 402(e)(4) of the Code, in the case of any transaction to which section 402(j) of the Code applies, the determination of net unrealized appreciation shall be made without regard to such transaction", and section 402(j)(2)(A) of the Code provides in part that section 402(j) of the Code "shall apply to any transaction in which the plan trustee exchanges the plan's securities of the employer corporation for other such securities." Thus, Plan X's exchange of its Company B shares for Company A shares, and Plan Y's exchange of its Company A shares for Company B shares, will be an exchange of securities of the employer corporation so that the determination of net unrealized appreciation will be made without regard to such exchange or disposition.

Furthermore, section 402(j)(2)(B) of the Code provides in part that section 402(j) "shall apply to any transaction in which the plan trustee disposes of securities of the employer corporation and uses the proceeds of such disposition to acquire securities of the employer corporation within 90 days (or such longer period as the Secretary of the Treasury may prescribe), except that this subparagraph shall not apply to any employee with respect to whom a distribution of money was made during the period after such disposition and before such acquisition."

Accordingly, in the event that Plan X (i) exchanges Company B shares received pursuant to the Spin-Off for Company A shares, or (ii) disposes of such Company B shares and reinvests the proceeds in Company A shares within 90 days (or such longer period as the Secretary of the Treasury may prescribe), such exchange or disposition will constitute an exchange of "securities of the employer corporation" for purposes of section 402(j)(2) of the Code so that the determination of net unrealized appreciation will be made without regard to such exchange or disposition.

Additionally, the disposition by Plan X of Company B shares and the disposition by Plan Y of Company A shares, followed by the reinvestment of the proceeds in Company A shares for Plan X and in Company B shares for Plan Y, will be a disposition of securities of the employer corporation followed by a reinvestment of the proceeds in securities of the employer corporation.

Since a disposition of Company B shares followed by the reinvestment of proceeds in Company A shares is a disposition of securities of the employer corporation followed by a reinvestment of the proceeds in securities of the employer corporation for purposes of section 402(j) of the Code, we conclude that to the extent that Plan X exchanges Company B shares for Company A shares or disposes of Company B shares and reinvests the proceeds in Company A shares as described above, the basis of the replacement Company A shares for purposes of determining net unrealized appreciation under section 402(e) of the Code will be equal to the basis of Company B shares being replaced.

In the event that Plan Y (i) exchanges Company A shares held by Plan Y for Company B shares, or (ii) disposes of such Company A shares and reinvests the proceeds in Company B shares within 90 days (or such longer period as the Secretary of the Treasury may prescribe), such exchange or disposition will constitute an exchange of "securities of the employer corporation" for purposes of section 402(j)(2) of the Code so that the determination of net unrealized appreciation will be made without regard to such exchange or disposition.

Since a disposition of Company A shares followed by the reinvestment of proceeds in Company B shares will be a disposition of securities of the employer corporation followed by a reinvestment of the proceeds in securities of the employer corporation for purposes of section 402(j) of the Code, we conclude that to the extent that Plan Y exchanges Company A shares for Company B shares or disposes of Company A shares and reinvests the proceeds in Company B shares as described above, the basis of the replacement Company B shares for purposes of determining net unrealized appreciation under section 402(e) of the Code will be equal to the basis of Company A shares being replaced.

With respect to ruling request 10, Company A shares held in Plan X are employer securities within the meaning of section 407(d)(1) of ERISA. The shares are also publicly traded employer securities within the meaning of section 401(a)(35)(E) of the Code. Company B shares held in Plan Y following the Spin-Off will be employer securities within the meaning of section 407(d)(1) of ERISA, and it is intended that they will be publicly traded employer securities within the meaning of section 401(a)(35)(E) of the Code. Accordingly, Plan X and Plan Y are each an "applicable defined contribution plan" subject to the requirements of section 401(a)(35) of the Code.

However, following the Spin-Off, Company B ceased to be the employer of the participants covered under Plan X, and Company A ceased to be the employer of the participants covered under Plan Y. In addition, Company A and Company B are no longer affiliated employers within the meaning of section 407(d)(7) of ERISA since Company A and Company B will not be members of the same controlled group of corporations as determined under section 1563(a) of the Code (except substituting 50 percent for 80 percent). Since section 407(d)(1) of ERISA defines "employer security" as a security issued by an employer of employees covered by the plan or by an affiliate of such an employer, following the Spin-Off, Company B shares are not employer securities with respect to Plan X, and Company A shares are not employer securities with respect to Plan Y.

Section 401(a)(35)(D)(ii)(II) of the Code only prohibits restrictions or conditions with respect to the investment of employer securities which are not imposed on the investment of other assets of the plan and imposes no such restrictions on any other investments held in an applicable defined contribution plan. Therefore, following the Spin-Off, since Company B shares are not employer securities with respect to Company A and Company A shares are not employer securities with respect to Company B,

Company B shares in Plan X should not be investments in employer securities subject to the prohibition on investment restrictions of section 401(a)(35)(D)(ii)(II) of the Code and Company A shares in Plan Y should not be investments in employer securities subject to the prohibition on investment restrictions of section 401(a)(35)(D)(ii)(II) of the Code.

With respect to ruling requests 11 through 13, the Company B shares acquired by Plan X as a result of the Spin-Off were received in connection with a corporate reorganization which was intended to meet the requirements of section 355 of the Code, and as a direct result of Plan X's ownership of the Company A shares held by Plan X before the Spin-Off. Company B shares and Company A shares were transferred following the Spin-Off from Plan X to Plan Y in a manner intended to comply with section 414(l) of the Code and section 1.414(l)-1 of the Regulations. Therefore, the Company A shares and the Company B shares held in both Plan X and Plan Y following the Spin-Off represent the aggregate value of the original Company A shares held prior to the Spin-Off, and Company B shares held in Plan X and Plan Y replace a portion of the value of the Company A shares held in Plan X immediately before the Spin-Off.

Company B shares acquired by Plan Y were received in connection with a corporate reorganization which was intended to meet the requirements of section 355 of the Code, and in direct relation to the original Company A shares held in plan solution. In addition, the Company B shares held immediately after the Spin-Off represent a portion of the value of the Company A shares held immediately prior to the Spin-Off.

Since we have concluded that Company B shares held by Plan X and Company A shares held by Plan Y following the Spin-Off are "securities of the employer corporation" for purposes of section 402(e)(4) of the Code, such Company B shares and Company A shares are also to be regarded as "applicable employer securities" within the meaning of section 404(k)(3) of the Code.

Because section 404(k) of the Code permits a corporation to deduct the amount of any applicable dividend paid in cash by the corporation during the taxable year with respect to employer securities which are held on the record date for such dividend by an employee stock ownership plan which is maintained by the corporation paying the dividend or any other member of the same controlled group, we conclude that Company A will be allowed a deduction for any cash dividends paid in respect of Company A shares held in Plan X in the tax year in which the dividend is paid or distributed to a participant or beneficiary, and Company B will be allowed a deduction for any cash dividends paid in respect of Company B shares held in Plan Y in the tax year in which the dividend is paid or distributed to a participant or beneficiary.

Given that the Company A shares and the Company B shares to be held by Plan Y following the Spin-Off represent a portion of the value of the original Company A shares held by Plan X prior to the Spin-Off, and such Company A shares and Company B shares remain "securities of the employer corporation" for purposes of section 402(e)(4) of the Code following the Spin-Off, we determine that such Company A shares and

Company B shares are also regarded as "applicable employer securities" within the meaning of section 404(k)(3) of the Code so that cash dividends paid by Company A in respect of such Company A shares and by Company B in respect of such Company B shares will be deductible by Company A and Company B, respectively, in the tax year in which the dividend is paid or distributed to a participant or beneficiary, irrespective of whether the underlying Company A shares or Company B shares are held in Plan X or Plan Y at the time the dividend is paid.

This ruling is based on the assumption that Plan X, and Plan Y, are qualified under section 401(a) of the Code, that they meet the requirements of section 4975(e)(7) of the Code, and their related trusts are exempt from taxation under section 501(a) of the Code at all times relevant to this ruling.

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 is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may be used or cited as precedent.

A copy of this ruling letter is being sent to your authorized representative in accordance with power of attorney on file in this office.

If you have any question about this ruling letter, please contact xxxxxxxxxxxxxxxx, at xxxxxxxxxxxxxx.

Sincerely yours,

Laura B. Warshawsky, Manager
Employee Plans, Technical Group 3

Enclosures;
Deleted Copy of Ruling letter
Notice of Intention to Disclose

cc: xxxxxxxxxxxxxx