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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG 20 2003

Uniform Issue List 0404.00-00

T:EP:RA:T3

Attention:

Legend:

Corporation A =

Corporation B =

Corporation C =

Plan U =

Plan V =

Plan W =

Plan X =

Plan Y =

Plan Z =

Dear

This is in response to your letter of January 14, 2003, in which you requested a ruling on behalf of Corporation A with respect to deductibility of contributions under section 404(a)(7) of the Internal Revenue Code (the "Code"). A letter dated May 22, 2003, supplemented the request.

Corporations A, B, and C are engaged in the business of . Corporation A is the common parent of a controlled group of corporations (that includes Corporations B and C) that files a consolidated federal income tax return on a calendar-year basis. Corporations A, B, and C collectively maintain Plans U, V, W, X, Y, and Z, all of which are qualified under section 401(a) of the Code.

Plan U, is a profit sharing plan that covers all or most common law employees of Corporations A, B, and C. Plan V, a defined benefit plan that generally covers employees of Corporations A and B, was recently converted to a cash balance plan. Employees who were participants in Plan V as of the date of the conversion are "grandfathered" and may continue to accrue a traditional defined benefit for from the date of the conversion. All employees who participate in the Plan V are also participants in Plan U.

Employees of Corporation C participate in Plan U and Plan W, which is a money purchase pension plan sponsored by Corporation C. There are, however, two groups of former employees of Corporation A who became employees of Corporation C during in connection with the transfer of the business units in which they worked to Corporation C, and who remain participants in Plan V. Pursuant to Plan V, these employees, who were transferred to Corporation C before the date of the cash balance conversion, continue to accrue additional benefits under Plan V attributable to their compensation from Corporation C. Currently, there are such employees, who accrue benefits under Plan V, remain active participants in Plan U, and are also active participants in Plan W. In addition, there is a smaller group of individuals who were employees of Corporation C but who became employees of another subsidiary of Corporation A that participates in the Plans U and V. These individuals are actively accruing benefits under the Plans U and V and are entitled to future benefits under Plan W as well.

In addition, Corporation B sponsors three tax-qualified Plans for its who are treated as employees under section 7701(a)(20) for purposes of various rules relating to benefit plans *(i.e.,* those who are statutory employees). These three Plans are Plans X, Y, and Z. Plan X is a profit sharing plan, Plan Y is a frozen defined benefit plan, and Plan Z is a money purchase pension plan. While participation in Plans X, Y, Z and participation in Plans U, V, and W (covering Corporation A's common-law employees) are generally mutually exclusive, over the years, a number of common-law employees have become and a number of have become common-law employees). As a result, there are currently approximately individuals who are entitled to benefits under either two or all three of the Plans of Corporation B, as well as Plan U and Plan V. Plan Y was frozen effective . Although Plan Y is frozen, employer contributions are still being made to this plan. There are participants in both Plan Y and Plan V.

Corporation A will make the contributions to Plans U and V that it is required to make under applicable provisions of the Code and the terms of Plans U and V to fund the benefits accruing thereunder. In addition, Corporation A now proposes to contribute to Plan V an amount equal to or approximately equal to the maximum amount that it can contribute on a fully deductible basis.

With respect to each Plan, contributions made to such plan will not exceed the amount deductible with respect to the Plan under section 404(a)(l) or 404(a)(3), as applicable, for the taxable year ending December 31, 2002. In addition, Corporation A represents that the total amount contributed to Plans U, V, W, X, Y, and Z for the 2002 plan years will not exceed 25 percent of the aggregate compensation, within the meaning of section 404(a)(12), paid or accrued during the taxable year to the participants under Plans U, V, W, X, Y, and Z.

Based on the foregoing facts, information and representations, you request a ruling that in determining the total amount that will be deductible under section 404 with respect to contributions made for 2002, the 25 percent limit under section 404(a)(7) will be applied with respect to Plans U, V, W, X, Y, and Z by reference to the contributions to all the Plans and the compensation paid to all participants in those Plans.

Section 404(a) of the Code provides, generally, that contributions paid by an employer to a qualified pension or profit-sharing plan will be deductible under section 404 in the taxable year when paid if they would otherwise be deductible under the Code, provided that the amount of the contributions does not exceed the limits set forth in section 404(a). Section 404(a)(1) sets forth the limits generally applicable to contributions to pension plans; section 404(a)(3) specifies the limits generally applicable to defined contribution plans, which includes profit-sharing plans and, except as otherwise provided by the Service, defined contribution plans subject to section 412 *(e.g.,* money purchase pension plans).

Section 404(a)(7) of the Code provides that, if amounts are deductible in connection with one or more defined contribution plans and one or more defined benefit plans or in connection with trusts or plans described in two or more of the foregoing paragraphs of section 404(a), the total amount deductible in a taxable year under the plans shall not exceed the greater of (i) 25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under the plans, or (ii) the amount of the contributions made to or made under the defined benefit plans to the extent such contributions do not exceed the amount of employer contributions necessary to satisfy the minimum funding standard provided by section 412 with respect to any such defined benefit plans for the plan year which ends with or within such taxable year (or for any prior plan year).

Section 1.404(a)-13 of the Income Tax Regulations states that:

> The provisions of section 404 a)(7) apply only to deductions for overlapping trusts or plans, *i.e.,* for all trusts or plans for which deductions are allowable under section 404(a)(1), (2), or (3) except (1) any trust or plan for which deductions are allowable under section 404(a (1) or (2) and which does not cover any employee who is also covered under a trust for which deductions are allowable under section 404(a)(3), and (2) any trust for which deductions are allowable under section 404(a)(3) and which does not cover any employee who is also covered under a trust or plan for which deductions are allowable under section 404(a)(1) or (2). The limitations under section 404(a)(7) for any taxable year of the employer are based on the compensation otherwise paid or accrued during the year by the employer to all employees who, in such year, are beneficiaries of the funds accumulated under one or more of the overlapping trusts or plans.

Section 414(b) provides, in part, that, with respect *to* a plan adopted by more than one member *of* a controlled group *of* corporations, the applicable limitations *of* section 404(a) shall be determined as if all controlled group members adopting the plan were a single employer and allocated to each controlled group member in accordance with regulations. No regulations have been issued defining such an allocation process.

Section 404(a)(7) of the Code provides that deductions for contributions to multiple trusteed plans, at least one of which is a defined benefit plan or is subject to section 404(a)(1) and at least one of which is a defined contribution plan or is subject to section 404(a)(3), are limited to "25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans... ."
Many of the participants in Plan U, a defined contribution plan that is subject to the limits of section 404(a)(3), are also participants in the Plan V, a defined benefit plan that is subject to the limits of section 404(a)(1).

Plan W is also a plan that overlaps with Plans U and V as a result of the transfer of employees from Corporation A to Corporation C in , who accrue benefits under all three plans, and the transfer of some Corporation C employees to Corporation A, who accrue benefits under Plans U and V, while retaining accounts under Plan W. That is, Corporation C and Corporation A employees who are covered under Plan V and Plan W cause these plans to be overlapping plans. Section 404(a)(7)(C)(i) provides that section 404(a)(7) is not applied to reduce the deductions under section 404(a)(I), (2) or (3) only "if no employee is a beneficiary under more than I trust.. ."

Accordingly, because the Plan V and Plan W are overlapping plans and all of the participants of these two Plans also participate in Plan U, these three Plans are overlapping plans within the meaning of section 404(a)(7) of the Code.

Similarly, all of the participants in the Plan X, a profit sharing plan, which is subject to the limits of section 404(a)(3), are participants in Plan Y, a frozen defined benefit plan

and/or the Plan Z, a money purchase plan. In addition, a majority of the participants in Plan Z, which is also subject to section 404(a)(3), are participants in Plan Y. Because Plan Y is subject to the limits of section 404(a)(1), and because it covers participants who are also covered by one or two plans subject to the limits of section 404(a)(3), these three plans are subject to section 404(a)(7) and are overlapping plans as defined in the applicable Treasury regulation.

Accordingly, we conclude based on the foregoing facts, information and representations, that in determining the total amount that will be deductible under section 404 with respect to contributions made for 2002, the 25 percent limit under section 404(a)(7) will be applied with respect to the Plans U, V, W, X, Y, and Z by reference to the contributions to all the Plans and the compensation paid to all participants in those Plans.

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 ruling is based on the assumption that all applicable Plans will at all times relevant to the transactions described above, remain qualified under section 401(a) of the Code.

A copy of this letter 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

Frances V. Sloan, Manager
Tax Exempt and Government Entities Division

Enclosures:
Notice of Intention to Disclose
Deleted Copy of Ruling

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