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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

U.I.L. 404.01-00

JUL 25 2002

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T:EP:RA:T2

ATTN: XXXXXX

Trust F	=	***
Employer M	=	***
State A	=	***
Plan X	=	***
Bank B	=	***

Dear ***:

This is in response to your request for a ruling dated ***, as supplemented by correspondence dated ***, ***, ***, and ****. Your ruling request was revised and restated on ***, and further supplemented by correspondence dated ***. You request a ruling concerning the use of a trust agreement , hereinafter, Trust F, to fund benefits for Plan X, an arrangement described in section 403(b) of the Internal Revenue Code.

The following facts and representations have been submitted:

Trust F was established on December 13, 1995, for the purposes of accepting, holding, and managing assets of qualified employer pension and profit sharing plans and other eligible deferred compensation plans. Trust F received a favorable group trust determination letter under Revenue Ruling 81-100 on June 23, 1995.

Currently, participating plans in Trust F invest in a selection of nine mutual funds. Investments in these mutual funds are accounted for separately by fund and by plan. There is no commingling of plan assets in Trust F requiring the creation of trust units. You further represent that separate and distinct mutual fund accounts are maintained for each participating plan.

The use of separate fund accounts for each plan participating in Trust F makes the accounting for Trust F plans indistinguishable from the accounting for separate employer plans. You state that plans participating in Trust F have the advantage of "group buying" which eliminates certain commissions and/or fees while allowing participants a choice of quality investments.

Employer M, a State A nonprofit educational corporation maintains a Code section 401(a) plan for the benefit of its employees. The plan assets of Employer M's Code section 401(a) plan are held in Trust F. Employer M also sponsors Plan X, an arrangement described in section 403(b) of the Code for some of its employees. Employer M desires to have its Plan X funds held by Trust F. It is represented that Plan X assets will be pooled with other plan assets in Trust F for investment purposes only. Trust F provides that assets held in Trust F shall not be used or diverted to any purpose other than to the exclusive benefit of the employees who are entitled to benefits under the various employer plans.

You represent that Trust F is best described as a common/collective trust. The trustee of Trust F is Bank B, a national bank regulated, supervised, and subject to periodic examination by state and/or federal agencies. All assets held by Trust F are titled to Bank B, pursuant to the terms of Trust F. You further represent that Trust F has made annual filings of the information required on Form 5500 with the Department of Labor designating Trust F as a common/collective trust.

Based upon the aforementioned facts, the following ruling has been requested:

If Trust F pools the assets of Plan X, a tax-sheltered annuity arrangement sponsored by Employer M, that otherwise satisfies the requirements of section 403(b) of the Code with (i) other Code section 401(a) assets, including pension, profit-sharing, and stock bonus plans, (ii) government plans, and (iii) individual retirement accounts, Plan X, as sponsored by Employer M, will not fail to satisfy the requirements of section 403(b) of the Code.

Section 401(a) of the Code provides that a trust created or organized in the United States and forming part of a stock bonus, pension, or profit sharing plan of an employer for the exclusive benefit of its employees or their beneficiaries will constitute a qualified trust if, among other requirements, contributions are made to the trust by such employers, or employees, or both, for the purpose of distributing to such employees or their beneficiaries corpus and income of the fund accumulated by the trust, in accordance with the plan. Section 401(a)(2) requires that trust assets be used exclusively for such purposes prior to satisfaction of all liabilities under the plan.

In Revenue Ruling 81-100, the Service ruled that a group trust holding assets contributed to a trust under two or more plans can be exempt from tax under

section 501(a) of the Code. The exemption of the group trust is derived from the tax-qualified status of the participating plans under section 401(a). In order to obtain such exempt status, five requirements are imposed:

1. The group trust must be adopted as part of the participating plan;

2. Participation in the group trust must be limited to qualified plans;

3. The trust instrument must preclude use of a participating plan's equitable interest in the trust for any purpose other than the exclusive benefit of participants and beneficiaries under the plan;

4. The trust instrument must preclude assignment of a participating plan's interest in the trust; and

5. The group trust must be created or organized in the United States and maintained as a domestic trust.

Similar requirements apply if funds held in individual retirement accounts that comply with section 408 of the Code are invested in the group trust. The result of these requirements is that assets held in the group trust are subject to the same requirements concerning their use and the benefits they provide as are the assets directly held by the participating plans and individual retirement accounts.

Section 403(b) of the Code provides that amounts contributed by an employer to purchase an annuity contract for an employee are excludable from the gross income of the employee in the year contributed to the extent of the applicable "exclusion allowance", provided (1) the employee performs services for an employer which is exempt from tax under section 501(a) of the Code as an organization described in section 501(c)(3), or the employee performs services for an educational institution (as defined in section 170(b)(1)(A)(ii) of the Code) which is a state, a political subdivision of a state, or an agency or instrumentality of any one or more of the foregoing; (2) the annuity contract is not subject to section 403(a) of the Code; (3) the employee's rights under the contract are nonforfeitable except for failure to pay future premiums; (4) such contract is purchased under a plan which meets the nondiscrimination requirements of paragraph (12), except in the case of a contract purchased by a church; and (5) in the case of a contract purchased under a plan which provides a salary reduction agreement, the plan meets the requirements of section 401(a)(30).

Section 403(b)(1) of the Code further provides that the employee shall include in his gross income the amounts actually distributed under such contract in the year distributed as provided in section 72 of the Code.

Nothing in the Internal Revenue Code nor the Income Tax Regulations thereunder would prevent an arrangement such as described herein to result in an arrangement being one other than one as described under section 403(b) of the Code. The arrangement herein described is analogous to the facts as described in Revenue Ruling 81-100, wherein individual trusts were combined into a group trust.

Accordingly, with respect to your ruling request, we conclude that, if Trust F pools the assets of Plan X, a section 403(b) annuity arrangement sponsored by Employer M that otherwise satisfies the requirements of section 403(b) of the Code, with (i) other Code section 401(a) assets, including pension, profit-sharing, and stock bonus plans, (ii) government plans, and (iii) individual retirement accounts, the commingling of the assets of Plan X with assets from the above enumerated plans will not result in Plan X failing to satisfy the requirements of section 403(b) of the Code.

By correspondence dated July 24, 2002, you withdrew ruling request number two of your revised and restated ruling dated July 12, 2002.

This ruling is based on the assumption that Plan X meets the requirements of section 403(b) of the Code. Further, this ruling does not express an opinion as to the status of Trust F under Rev. Rul. 81-100. Additionally, this ruling does not express any opinion as to the qualified status of any plans participating in Trust F under section 401(a) of the Code, section 401(a)(24) of the Code, or section 408(e) of the Code.

Should you have any questions, please contact :
, T:EP:RA:T2, :

Sincerely yours,

(signed) JOYCE E. FLOYD
Joyce E. Floyd
Manager, Employee Plans
Technical Group 2

Enclosures:
Copy of this letter, Deleted Copy and Notice 437

cc: