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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SIN 72.00.00

APR 30 2003

T:EP:RA:T4

ATTN:
General Counsel

LEGEND:

Employer M =

State C =

Plan X =

Plan Y =

Dear Ms.

This letter is in response to a request for a private letter ruling dated , supplemented by letters dated and submitted on your behalf by your authorized representative.

The following facts and representations have been submitted:

Employer M maintains Plan X and Plan Y. Employees who meet the eligibility requirements of Plan X and Plan Y participate in both plans. The eligibility provisions for Plan X and Plan Y are the same with the exception that Plan X continues accrual to age 65 for employees who are no longer working due to long term disability.

Employer M established Plan X, a defined benefit plan, on Plan X is administered under the applicable

provisions of section 401(a) of the Internal Revenue Code (the "Code"). Prior to October 1, 1981, Plan X required employee contributions. These required employee contributions were made from after-tax dollars. Section 4.02 of Plan X provides that Members are not required or permitted to make contributions after .; however, effective , Members may contribute to Plan X to purchase an additional Pension pursuant to section 6.04. Section 6.04 of Plan X provides that a member whose Severance Date falls on or after September 1, 1995 and who is entitled to a Pension may elect to purchase an additional monthly annuity by electing to leave his or her Accumulated Contributions in Plan X in lieu of receiving a refund of such amounts in accordance with Section 4.04 of Plan X.

Section 4.04 of Plan X provides that Accumulated Contributions (Member Contributions) shall be refunded upon the Severance Date of active Members or upon the Annuity Starting Date of Disabled Members as soon as administratively feasible, unless the Member elects to apply his or her Accumulated Contributions to the purchase an additional Pension under section 6.04. Section 1.02 of Plan X defines Accumulated Contributions as the sum of the Member's contributions made to the Plan, with interest credited in accordance with section 4.03. Section 4.03 of Plan X provides in general, that a Member's Contributions, after December 31, 1972, shall be credited with interest at five percent compounded annually, until the month in which the Member retires, dies or receives a refund in accordance with section 4.04, whichever is earlier.

Section 1.01 of Plan X defines accrued benefits, as of any date of determination, as the normal retirement Pension computed under section 5.01 on the basis of the Member's Average Final Compensation and Credited Service to that date. Article 5 of Plan X contains the rules for eligibility for and the determination of the benefit amount payable under Plan X. Section 5.01(b) of Plan X provides that the monthly normal retirement Pension payable upon retirement on a Member's Normal Retirement Date on or after January 1992 shall be equal to the larger of (i) the sum of 1, 2, 3, 4; or (ii) 5, and shall be calculated as follows:

1. For Service Before June 1, 1951: $3.00 times Credited Service (including Partial years) before June 1, 1951.

2. For Service After May 31, 1951 and Before January 1, 1971; $4.00 times Credited Service (including partial years) after May 31, 1951 and before January 1, 1971.

3. For Service After December 31, 1960 and Before January 1, 1971: (A) the sum of $2.20 and 2 percent of Average Final Compensation in excess of $400.00, times (B) Credited Service (including partial years) after December 31, 1960 and before January 1, 1971

4. For Service after December 31, 1970: (A) The sum of 1.25 percent of Average Final Compensation and .45 percent of Average Final Compensation in excess of Covered Compensation, times (B) Credited Service (including partial years credited prior to December 31, 1996) after December 31, 1970.

5. Minimum Benefit: (A) the sum of 1.5 percent of Average Final Compensation and .45 percent of Average Final Compensation in excess of Covered Compensation, times (B) Credited Service (including partial years credited prior to December 31, 1996) not in excess of 35 years.

The refund of Accumulated Contributions provided for in section 4.04 of Plan X is an extra benefit, separate from and in addition to the annuity benefit described in article 5 of Plan X.

Employer M established Plan Y, a defined contribution plan, effective January 1, 1999. It is intended that Plan Y meet the requirements of section 401(a) and section 401(k) of the Code. Plan Y's most recent favorable determination letter is dated June 29, 2002. Article 3 of Plan Y provides for elective contributions and employer matching contributions. Section 9.3 of Plan Y allows participants to direct the investment of their accounts among various investment options.

In order to allow participants the advantage of directing the investment of their after tax accumulated contributions in Plan X, Employer M proposes to transfer the after tax accumulated contributions from Plan X to Plan Y. Employer M proposes to amend section 4.03 of Plan X. Section 4.03 of Plan X, Accumulated Value of Member Contributions, provides how interest is credited on a Member's contributions. Employer M proposes to add the following language to Section 4.03 of Plan X:

> Interest shall not be credited past the date on which, due to Employer M's direction, the Member's Accumulated Contributions are transferred to a

> fully vested account held in the name of the Member in Plan Y. Upon such transfer of accumulated contributions to Plan Y, the provisions of this plan governing payout of Accumulated Contributions (Sections 4.04, 4.05 and 6.04) shall no longer apply to the Accumulated Contributions that are no longer in this Plan. Employer M's direction to transfer Accumulated Contributions may apply to all Accumulated Contributions or may allow each Member to decide whether to transfer that Member's Accumulated Contributions.

Employer M also proposes to amend Plan Y by adding section 3.7 as follows:

> Assets transferred to this Plan from Plan X shall be held in the Account of the Participant for whom the assets were held in Plan X. A subaccount called the "Transferred Asset Account" shall be established for this purpose. Assets in the Transferred Asset Account shall be 100% vested and shall be subject to the rules of this Plan regarding investment and distribution. The Participant's tax basis in the Transferred Asset Account shall equal the amount of after-tax contributions the Participant made to Plan X.

The definition of Account as it appears at Section 1.1(a) of Plan Y will also be amended to add a third subaccount, Transferred Asset Account, to hold the assets transferred from Plan X to Plan Y.

Although Employer M is an agency or instrumentality of State C which would otherwise be ineligible to maintain a qualified cash or deferred arrangement, you have represented that Employer M is an eligible organization as defined in section 401(k)(7)(B)(iv)(II) of the Code. Section 401(k)(7)(B)(iv)(II) provides that any organization which is a district organized under the laws of a State as a municipal corporation for the purpose of irrigation, water conservation or drainage is a rural cooperative which is eligible to maintain a qualified cash or deferred arrangement. You have asserted that Employer M meets all the requirements to be a district organized under the laws of State C as a municipal corporation for the purpose of water conservation.

Based on the foregoing facts and representations, you request a ruling that Plan X will not retain any basis in the

after tax contributions once the after tax contributions are transferred to Plan Y.

Section 402(a) of the Internal Revenue Code (the "Code") provides, in general, that the 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 year in which so distributed, under section 72 (relating to annuities).

Revenue Ruling 67-213, 1967-2 C.B. 149, involves the transfer of funds directly from the trust forming part of a qualified pension plan to the trust forming part of a qualified stock bonus plan. The revenue ruling provides, in part, that if a participant's interest in a qualified plan is transferred from the trust forming part of that plan to the trust forming part of another qualified plan without being made available to the participant, no taxable income will be recognized by reason of such transfer.

In this case, Plan X and Plan Y are assumed to be plans that are qualified under section 401(a) of the Code. Therefore, the proposed transfer is being made directly from one qualified plan to another qualified plan. Since the funds are being transferred directly from one qualified to another qualified plan, the transferred amounts are not considered to be distributed to the members for whom such transfer are made. In this case, only after-tax employee contributions are being transferred from Plan X to Plan Y. To the extent the transferred funds are derived from after-tax employee contributions, they continue to be funds derived from after-tax employee contributions. The net amount earned will be includible in the employees' gross income only when distributions are made from a plan, as provided in section 402(a) of the Code.

Accordingly, with respect to your ruling request we conclude that the tax basis for the after-tax contributions directly transferred from Plan X to Plan Y will also be transferred to Plan Y.

This ruling is based on the assumption that Plan X and Plan Y, as amended, meet the requirements for qualification under section 401(a) of the Code at the time of the proposed transfer.

This ruling is also based on the assumption that Employer M is in fact a district organized under the laws of a State as a municipal corporation for the purpose of irrigation, water conservation or drainage is a rural cooperative which is eligible

to maintain a qualified cash or deferred arrangement in accordance with section 401(k)(7)(B)(iv)(II) of the Code.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or the regulations that may be applicable thereto.

This letter 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.

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 concerning this ruling, please contact at

Sincerely yours,

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

Enclosures:
Deleted copy of letter ruling
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