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Person to Contact:

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Date:
September 30, 1999

Fcorp =

Holding =

Parent =

Sub 1 =

Sub 2 =

Country X =

Country Y =

Z =

Date 1 =

Date 2 =

Date 3 =

A =

This is in reply to your letter, dated November 10, 1998, requesting rulings concerning the federal tax consequences of a proposed transaction. Additional information was submitted in subsequent submissions. In a telephone conversation on September 23, 1999, you withdrew the ruling in your September 9, 1999 submission.

Fcorp is a Country X mutual life insurance company. As a mutual insurance company, Fcorp has no capital stock. Instead, participating policyholders of Fcorp and certain participating policyholders of Sub 2 (together "Members") own all of the proprietary interests ("Membership Interests") in Fcorp. The Members have voting rights and the right to receive a pro rata portion of the residual value of Fcorp on liquidation.

Fcorp owns all of the stock of Parent, a domestic corporation that is not an insurance company. Parent owns all of the stock of Sub 1, a domestic life insurance company and the parent corporation of a consolidated group filing a life-life consolidated return. Sub 1 owns all of the stock of Sub 2, a domestic life insurance company and member of the Sub 1 consolidated group.

On Date 1 and Date 2, Fcorp entered into assumption reinsurance transactions with Sub 2 in which Fcorp transferred to Sub 2 all of Fcorp's U.S. insurance policies, annuity contracts, and other insurance contracts together with other assets and liabilities of Fcorp's U.S. branch. Pursuant to approval by the Country X regulatory authorities, holders of participating U.S. policies of Fcorp prior to the reinsurance transactions retained their Membership Interests in Fcorp.

For what have been represented as valid business purposes, Fcorp plans to demutualize (the "Demutualization") and become a wholly owned subsidiary of a new publicly owned stock holding company, Holding. Holding will conduct an IPO at least five days after the effective date of the Demutualization (the "Effective Date"). As a result of the Demutualization and Holding company formation, "Eligible Policyholders," who are generally policyholders who owned participating policies as of Date 3, will receive cash, or stock, or stock and cash, or policy credits in exchange for their Membership Interests.

Except as provided below, all Eligible Policyholders other than Eligible Policyholders residing in jurisdictions other than Country X, the United States, Country Y, and Country Z ("Mandatorily Selling Policyholders"), and policyholders who own retirement contracts ("Retirement Plan Policyholders") (collectively, the "Participating Policyholders") will be able to elect to receive cash, 50 % stock and 50% cash, or all stock. Participating Policyholders will not be given the opportunity to elect to receive any other mixture of stock and cash. Any Participating Policyholder that elects to receive 50-percent cash and 50-percent stock (a "50-percent Cash Policyholder") will be

treated as a Country X or Non-Country X Selling Policyholder (depending on whether such Policyholder is a resident of Country X or not) with respect to the 50-percent portion of the Membership Interest for which a cash election is made and as an Non-Selling Policyholder with respect to the 50-percent portion of the Membership Interest for which an election to receive Holding stock is made.

To accomplish the Demutalization and Holding company formation, the following steps are proposed:

i. Fcorp will form a new Country X holding company, Holding, to hold the stock of Fcorp following the Demutualization by contributing A to Holding in exchange for one share of Holding common stock and shares of nonvoting preferred stock (collectively the "Initial Capitalization Shares").

ii. As of the Effective Date, Holding will have entered into a binding underwriting agreement with underwriters that will require the underwriters to buy a set number of shares of Holding stock at a set price.

iii. Fcorp will convert from a mutual insurance company to a stock insurance company on the Effective Date.

iv. Country X Policyholders who elect to receive cash in exchange for their Membership Interests ("Country X Selling Policyholders") will receive the right to receive cash ("Cash Right") from Fcorp.

v. Retirement Plan Policyholders will receive the right to receive policy credits from Fcorp equal in value to their Membership Interests ("Policy Credits") in exchange for the Membership Interests.

vi. All other Participating Policyholders (other than Mandatorily Redeeming Policyholders, as described below) (the "Exchanging Policyholders") will be deemed to have exchanged their Membership Interests for Fcorp stock and then contributed the Fcorp stock to Holding in exchange for Holding common stock. Holding's transfer agent will reflect the issuance of the Holding shares to the Policyholders on the Effective Date. (In the case of the non-Country X Selling Policyholders, the transfer agent will reflect the issuance of the Holding shares to a custodian who will hold the shares on their behalf.)

vii. Mandatorily Selling Policyholders will be deemed to have exchanged their Membership Interests for Fcorp stock and then have contributed the Fcorp stock to Holding in exchange for Holding stock. Holding's transfer agent will reflect the issuance of the Holding shares to a custodian who will hold the Holding stock on the Mandatorily Selling Policyholders' behalf.

Holding will arrange to sell the shares issued on behalf of the Mandatorily Selling Policyholders in the "Secondary Offering" (as described below). If the Holding IPO does not close, the custodian will sell the Holding shares over a fixed period of time and the proceeds will be distributed to the Mandatorily Selling Policyholders.

viii. Eligible Policyholders who hold policies subject to a lien, levy, or garnishment or other court order in favor of creditors or subject to the jurisdiction of a bankruptcy court (Lien and Levy Policyholders) residing in Country X, the United States, Country Y, or Z (Exchanging Lien and Levy Policyholders) will not be entitled to elect to receive cash but instead will be issued stock in exchange for their Membership Interests. The Lien and Levy Policyholders who reside outside Country X, the United States, Country Y, and Z (Non-exchanging Lien and Levy Policyholders or "Mandatorily Redeeming Policyholders") will have their Membership Interests redeemed by Fcorp for cash in the Demutualization.

ix. Fcorp will issue one share of common stock to Holding for each share of Holding common stock issued to the Exchanging Policyholders. Holding will redeem the Initial Capitalization Shares on the Effective Date.

x. The Holding common stock issued to the custodian on behalf of the Non-Country X Selling Policyholders and the Mandatorily Selling Policyholders will be sold to the underwriters who will resell such stock to the public. The Secondary Offering will occur in conjunction with the Holding IPO on the "Completion Date." The Completion Date will be at least five days after the Effective Date.

xi. The net proceeds of the Secondary Offering will be distributed by the custodian to the Mandatorily Selling Policyholders and the Non-Country X Selling Policyholders. Holding will contribute a portion of the cash received in the IPO from the underwriter to Fcorp. Fcorp will use some of the cash to pay Country X Selling Policyholders with respect to their Cash Rights and pay cash to the Mandatorily Redeeming Policyholders in exchange for their Membership Interests. Holding will reimburse the Mandatorily Selling Policyholders and the Non-Country X Selling Policyholders (collectively "Holding Selling Policyholders") for the amount of any underwriting fees retained by the underwriters from the proceeds of the Secondary Offering (the "Underwriting Reimbursement").

xii. Fcorp will purchase Policy Credits from Sub 2 on behalf of the Retirement Plan Policyholders.

Fcorp and Holding will limit the total number of shares of Holding common stock that may be sold in the Secondary Offering to 20 percent of the total number of shares of Holding common stock to be issued to the Exchanging Policyholders and participants in the Holding IPO. In the event that the number of shares of Holding common stock issued on behalf of the Holding Selling Policyholders exceeds the number of shares that may be sold in the Secondary Offering under this limitation, Holding will (i) sell all the shares of Holding common stock issued on behalf of the Mandatorily Selling Policyholders, and then (ii) proportionately reduce the number of shares of Holding common stock sold on behalf of each Non-Country X Selling Policyholder so as to not exceed the maximum number of shares that may be sold in the Secondary Offering. Any Holding Common stock issued on behalf of a Non-Country X Selling Policyholder that is not sold in the Secondary Offering (along with any cash received from the sale of such policyholder's shares and any Underwriting Reimbursement) will be distributed to the policyholder.

The following representations have been made with respect to the transactions described above:

a. Prior to the Demutualization, Fcorp will not have any outstanding stock.

b. The fair market value of the Fcorp common stock to be issued by Fcorp will be approximately equal to the fair market value of the Fcorp Membership Interests surrendered in exchange therefor.

c. Fcorp has no plan to redeem or otherwise reacquire any of the stock to be issued in the Demutualization.

d. At the time of the Demutualization, Fcorp will not have outstanding any stock, options, warrants, convertible securities, or any other rights that are convertible into any class of stock or securities of Fcorp.

e. Fcorp will continue to conduct its life insurance business operations after the Demutualization.

f. The proposed Demutualization is a single, isolated transaction and is not part of a plan to periodically increase the proportionate interest of any shareholder or policyholder in the assets or earnings and profits of Fcorp.

g. Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the Demutualization and Holding formation transactions, except that Holding will pay the Underwriting Reimbursement to the Holding Selling Policyholders to reimburse them for any underwriting fees retained by the underwriters from the proceeds of the Secondary Offering.

h. Fcorp is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

i. Following the Demutualization, Fcorp will be treated under Country X law as the same corporation that existed as a mutual company.

j. No fractional shares in Fcorp or Holding will be issued in the transactions.

k. Other than the Policy Credits, no Eligible Policyholder will receive (or be deemed to receive) any property other than cash or Fcorp common stock in the Demutualization.

l. All distributions (or deemed distributions), whether of Fcorp common stock, cash, or Policy Credits as part of this transaction, will be received by the Eligible Policyholders in relinquishment of their Membership Interests in Fcorp as part of a value for value exchange.

m. No owner of a participating U.S. Policy has a Membership Interest in Fcorp that exceeds 5 percent of the value of all Membership Interests in Fcorp or entitles such owner to more than 5 percent of the total voting power in Fcorp.

n. Following the Demutualization and the transfer of the shares of Fcorp common stock to Holding in exchange for Holding stock, each former owner of a participating U.S. Policy will own less than 5 percent (applying the attribution rules of § 318, as modified by § 958(b)) of both the total voting power and total value of all stock in Holding.

o. Following the Demutualization, each Eligible Policyholder who will receive cash from Fcorp in redemption of his, her, or its Membership Interest in Fcorp will own (both actually and constructively under the § 318 attribution rules) either no stock in Fcorp or less stock than he, she, or it would have owned if the redemption had not occurred.

p. The only U.S. persons who will participate in the Demutualization are holders of participating U.S. Policies.

q. Fcorp is not currently, nor has it ever been, a controlled foreign corporation (a “CFC”) within the meaning of § 957 and it will not be a CFC at any time prior to the Demutualization. Holding will not be a CFC at the time of its formation and it will not be a CFC at any time prior to the Demutualization. Neither Fcorp nor Holding will be a CFC immediately after the Demutualization and Holding formation transactions.

r. If a Membership Interest is, for federal tax purposes, considered “common stock” within the meaning of § 1036(a) of the Code, the deemed exchange by the Exchanging Policyholders of their Membership Interests for Fcorp common stock in the Demutualization will constitute a transaction described in § 1036(a) of the Code.

s. Eligible Policyholders include both governmental and tax-exempt organizations that have purchased Policies (as defined in the taxpayer’s submission dated November 10, 1998) in connection with § 457 plans.

t. Fcorp is not a party to the § 457 plans.

u. The Demutualization will not modify the § 457 arrangements between eligible employers and employees.

Based solely on the information submitted and the representations set forth above, we rule as follows:

1. For U.S. federal income tax purposes, the conversion of Fcorp from a mutual corporation to a stock corporation will be treated as if (a) the Retirement Plan Policyholders transferred their Membership Interests in Fcorp to Fcorp in exchange for Policy Credits, (b) the Country X Selling Policyholders and the Mandatorily Redeeming Policyholders transferred their Membership Interests in Fcorp to Fcorp in exchange for cash and (c) the Exchanging Policyholders transferred their Membership Interests in Fcorp to Fcorp in exchange for Fcorp common stock.

2. For U.S. federal income tax purposes, the formation of Holding will be treated as if (a) the Exchanging Policyholders transferred their Fcorp common stock to Holding in exchange for Holding common stock (and, in the case of the Holding Selling Policyholders, the Underwriting Reimbursement) as part of the same transaction in which the participants in the Holding IPO transferred cash to Holding in exchange for Holding common stock and (b) the Holding Selling Policyholders sold their shares of Holding common stock in the Secondary Offering in exchange for cash.

3. For U.S. federal income tax purposes, to the extent that (i) the Holding IPO does not close or otherwise does not raise sufficient cash to redeem all of the Country X Selling Policyholders and/or the Secondary Offering does not close or otherwise is not sufficient to sell all of the Holding common stock as to which the Non-Country X Selling Policyholders have made cash elections and such policyholders receive shares of Holding common stock, rather than cash, the transactions will be treated as if such

policyholders received shares of Fcorp stock in exchange for their Membership Interests in Fcorp and then exchanged such stock for shares of Holding common stock as part of the same transaction in which the Exchanging Policyholders are deemed to have exchanged Fcorp common stock for Holding common stock and the Holding IPO participants transferred cash to Holding in exchange for Holding common stock.

4. The conversion of Fcorp from a mutual to a stock corporation as described above will constitute a recapitalization within the meaning of I.R.C. § 368(a)(1)(E). Fcorp will be "a party to a reorganization" within the meaning of § 368(b).

5. No gain or loss will be recognized by the Eligible Policyholders on the exchange of their Membership Interests solely for Fcorp stock. I.R.C. § 354(a)(1).

6. The basis of the Fcorp stock to be received by the Eligible Policyholders in the Demutualization will be the same as the basis of the Membership Interests surrendered therefor. I.R.C. § 358(a)(1). For the purposes of determining the Eligible Policyholders' basis in the Fcorp stock, the basis of the Membership Interests will be deemed to have been zero.

7. The holding period of the Fcorp stock to be received by the Eligible Policyholders will include the period during which the Eligible Policyholders held the Membership Interests surrendered in exchange therefor. I.R.C. § 1223(1).

8. No gain or loss will be recognized by Fcorp on the exchange of its stock for the Membership Interests of the Eligible Policyholders. I.R.C. § 1032(a).

9. The redemption of the Eligible Policyholders' Membership Interests in Fcorp will be treated as a distribution in partial or full payment in exchange for stock under I.R.C. § 302(a). For the purposes of determining gain in such redemption, the basis of the equity interests deemed to have been redeemed will be zero.

10. Eligible Policyholders who receive cash from the sale in the Secondary Offering of the Holding common stock issued on their behalf (i.e. the Holding Selling Policyholders, including the Non-Country X 50-percent Cash Policyholders) and from the Underwriting Reimbursement will be treated as (i) receiving money equal to the amount of the Underwriting Reimbursement (unreduced by any withholding tax paid to Country X) as part of the deemed exchange of Fcorp common stock for Holding

common stock and (ii) selling their Holding common stock for cash in the Secondary Offering. Provided that such policyholders hold the Fcorp common stock as a capital asset at the time of the deemed exchange, they will recognize a capital gain equal to the amount of the Underwriting Reimbursement (unreduced by any withholding tax paid to Fcorp) paid by Holding. I.R.C. § 351(b)(1). Provided such policyholders hold the Holding common stock as a capital asset at the time of the Secondary Offering, such policyholders will realize capital gain equal to the amount of net proceeds received from the underwriters from the Secondary Offering.

11. Provided that (a) the Non-Selling Policyholders (including the 50 percent Cash Policyholders with respect to the 50 percent portion of their Membership Interests for which they elect to receive Holding stock) and (b) the Holding IPO participants (and any Non-Country X or Country X Selling Policyholders who receive Holding common stock rather than cash (including the 50-percent Cash Policyholders to the extent they receive Holding stock with respect to the 50-percent portion of their Membership Interests for which they make a cash election) (collectively, the "Exchange Participants") will be in control of Holding within the meaning of I.R.C. §§ 351 and 368(c) immediately following the transfers of Fcorp stock and cash to Holding for Holding stock, as described in rulings 1 and 2 above, neither the payment of the Underwriting Reimbursement by Holding nor the subsequent sale of Holding stock by the Holding Selling Policyholders in the Secondary Offering will affect the characterization of the transfers by the Exchange Participants as transfers of property to Holding in exchange for Holding stock within the meaning of § 351.

12. Pursuant to § 1.367(a)-3(a), § 367(a) will not apply to the Demutualization.

13. Provided there are no United States persons who own five percent or more (applying the attribution rules of § 318, as modified by § 958(b)) of both the total voting power and total value of all stock in Holding, § 367(a) will not apply to any transfer or deemed transfer of Fcorp common stock to Holding in exchange for Holding stock.

14. The Demutualization will have no effect on the date each life insurance or annuity contract, which was transferred in either of the Date 1or Date 2 assumption reinsurance transactions between Fcorp and Sub 2, was issued, entered into, purchased or came into existence for purposes of §§ 72(e)(4), 72(e)(5), 72(e)(10), 72(e)(11), 72(q), 72(s), 72(u), 72(v), 101(f), 264(a)(1), 264(a)(3), 264(a)(4), 264(f), 7702, and 7702(A). The Demutualization will not require retesting or the starting of new test periods for the contracts under §§ 264(d)(1), 7702(f)(7)(B)-(E), and 7702A(C)(3)(A).

15. The Demutualization of Fcorp will not have any effect on the date life insurance or annuity contracts transferred to Sub 2 are issued, entered into, purchased or come into existence under the § 457 arrangements.

16. The receipt of Policy Credits pursuant to the Demutualization will not constitute a designated distribution within the meaning of § 3405(e)(1)(A) that is subject to withholding under § 3405(b) or (c).

Section 403(b)(1) 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 § 72. Section 403(b)(2) imposes a limit on the maximum amount which may be contributed to a tax-sheltered annuity described in § 403(b) on behalf of an employee in any taxable year. Section 403(b)(10) provides that the provisions of § 403(b)(1) will not apply to an annuity unless requirements similar to the minimum distribution requirements of § 401(a)(9) are met with respect to such annuity. Section 403(b)(11) provides that the provisions of § 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 1/2, separates from service, dies, or 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 § 403(b)(11) do not apply to distributions attributable to assets held in the tax-sheltered annuity arrangement described in § 403(b) of the close of the last year beginning before January 1, 1989. P.L. 99-514 (the "Tax Reform Act of 1986") section 1123(e)(2), as amended by P.L. 100-647 ("TAMRA") section 1011A(c)(11).

Section 408(a) of the Code defines an IRA account as a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the governing instrument creating the trust meets the requirements of § 408(a). Section 408(b) of the Code defines an IRA annuity as an annuity or endowment contract which is issued by an insurance company and which meets the requirements of § 408(b). Sections 408(a)(6) and 408(b)(3) impose requirements similar to the distribution requirements of § 401(a)(9) on distributions of the entire interest of the contract owner. Section 219 permits an individual taxpayer to deduct from gross income amounts contributed to an IRA, subject to the maximum annual deduction limitations specified in § 219(b). Sections 408(a)(1) and 408(b)(2) establish the annual limit on contributions and premiums to an IRA. Sections 402(c) and 408(d)(3), relating to rollover contributions, permit an individual taxpayer to purchase an IRA using funds distributed from certain other plans, subject to certain

requirements relating to the nature and amount of the distribution. Section 408(d)(1) 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 § 72.

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(e)(2) 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, and (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(c)(4) 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)(3) 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) provides, in part, that, with certain exceptions, an amount distributed from a trust described in § 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 § 403(a) or described in § 403(b), that the proceeds shall be included in gross income, but only to the extent it exceeds the investment in the contract. Section 72(e)(6) provides that the investment in the contract as of any date is the aggregate amount of premiums or other consideration paid for the contract as of such date, minus the aggregate amount received under the contract before such date to the extent such amount was excludible from income.

Section 72(t) of the Code provides, in part, that, if any taxpayer receives any amount from a qualified retirement plan (as defined in § 4974(c)) prior to certain dates or the occurrence of certain events specified in § 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 4973 of the Code imposes an excise tax equal to 6 percent of the amount of any excess contribution to an IRA. 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 § 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 a tax-sheltered annuity plan described in § 403(b) for a taxable year. Excess aggregate contributions under § 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 § 414(q) of the Code, for a

plan year in excess of the maximum amount of such contributions permitted under the actual contribution percentage test of § 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 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). Proposed Income Tax Regulation § 1.401(a)(9)-1, provides, in general, that the amount required to be distributed under § 401(a)(9) for each calendar year must be determined each year on the basis of the employee's, and any designated beneficiary's, life expectancy and the value of the employee's benefit. The proposed regulations also provide that in the case of a benefit in the form of an individual account, the benefit used in determining the minimum distribution for a distribution calendar year is the account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year.

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

As a general rule, all interest, 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 TSA contracts, the IRA contracts and the Qualified Plans contracts, until the assets are distributed. Only upon distribution are such increases in account value taxable to the recipient.

Central to our analysis of your submitted ruling requests is the question of whether or not membership interests in a mutual insurance company are within the stated plans.

In this regard, 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. Prior to the demutualization, the membership interests have no determinable value apart from the insurance contract itself. 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. Indeed, these membership interests cannot be obtained by any purchase separate from an insurance contract issued by Fcorp. In view of the foregoing, such interests are part of the tax qualified retirement contracts, created pursuant to §§ 401(a), 403(b), 408(a), and 408(b) and 408A, of the Code respectively.

Section 408A provides that except as provided for in this section, the term “Roth IRA” means an IRA described in § 408(a). Section 408A(d)(1) provides, in general, that any “qualified distribution” from a Roth IRA shall not be includible in gross income. Section 408A provides that a distribution shall not be treated as a qualified distribution under subparagraph (A) if (i) it is made within the 5-taxable year period beginning with the first taxable year for which the individual made a contribution to a Roth IRA, or (ii) in the case of a distribution properly allocable to a qualified rollover from an individual retirement plan, other than a Roth IRA, it is made within the 5-taxable year period beginning with the taxable year in which the rollover contribution was made.

While it has been recognized that consideration received in a demutualization transaction is in exchange for a membership interest in a mutual insurance company, and not from or under an insurance contract, such a distinction does not require the detachment of such consideration from the tax qualified retirement contracts, which consists of both the contracts and all other interests which arise with the purchase of such a contract. See, Revenue Ruling 71-233, 1971-1 C.B. 113. Rather, contracts and the related membership interests must be viewed as part of a program of "interrelated contributions and benefits" which are retained within the plans. Cf., Income Tax Regulation § 1.72-2(a)(3)(i).

The planned issuance of Policy Credits does not constitute a distribution of such credits to the annuitants. The conversion of membership interests in Fcorp to Policy Credits, is a mere change in form of one element within the arrangement to another. Since the conversion increases the accumulation value of the annuity contracts, the Policy Credits are treated, for purposes of §§ 401(a)(9), 403(b)(10), 403(b)(11), 408(b)(3), 408(a)(6), 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 §§ 402(a), 403(b)(1) and 408(d), only amounts paid or distributed under the applicable plans, will be included in the gross income of the distributee under the rules of § 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. As Policy Credits will be issued in exchange for membership interests, such interests being held within the applicable plans, no amount is treated as received by, or includible in, the gross income of any policyholder, under such plans, of Fcorp. For purposes of § 72(e)(3), the value of Plan Credits which will be added to the tax-qualified retirement contracts will

not be regarded as part of the investment in the contracts, an amount which under § 72(e)(6) consists of the aggregate amount of premiums or other consideration paid for the contract. In addition, as no amount is to be treated as having been distributed as a result of the issuance of Policy Credits, nor received by the tax-qualified retirement policyholders outside the plans, the additional 10 percent tax imposed by § 72(t) does not apply.

Section 4979 of the Code imposes excise taxes on certain excess contributions made to plans described in §§ 401(a) and 403(b). Section 4973 imposes excise taxes on certain excess contributions made to IRAs and to certain tax-sheltered annuity plans described in § 403(b). Because the addition of Policy Credits pursuant to the demutualization plan occurs within the above arrangements, causing neither a distribution from, nor a contribution to, such annuities, no excess contributions can be attributed to the addition of Policy Credits to the pension annuities. Distributions from plans qualified under § 401(a) must be made pursuant to § 401(a)(9). Sections 403(b)(10), 408(a)(6), and 408(b)(3) require distributions, under the respective plans, in compliance with rules similar to the minimum distribution requirements included in § 401(a)(9) and applicable to qualified plans under § 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 on the total value of the retirement benefit. As the Policy Credits to be issued by Fcorp will be treated as increasing the value of the tax-qualified retirement funding contracts in the year such Policy Credits are add to the tax-qualified retirement contracts, for purposes of determining the minimum required distributions for any calendar year, the value of the benefits attributable to such Policy Credits will first be required to be taken into account in the year such Policy Credits are added to the tax-qualified contracts.

Similarly, for purposes of determining the applicability of § 403(b)(11) of the Code, the limitation on distributions of amounts attributable to salary reduction contributions, the Plan Credits added to the tax-sheltered annuity arrangements described in § 403(b) issued by Fcorp are treated as income received within the tax-sheltered annuity arrangement.

Section 3405(b) of the Code requires a payor to withhold income taxes on certain "designated distributions," including distributions from or under an employer deferred compensation plan, an individual retirement plan or a commercial annuity. The addition of Plan Credits within the tax-sheltered annuity arrangement described in section 403(b) or IRA arrangement pursuant to the demutualization plan, does not result in the distribution of any amounts to individual policyholders, within the meaning of section 3405(e)(1)(a), and will not be subject to any requirement to withhold.

Accordingly, we conclude that under the terms of the proposed transaction, whereby Fcorp plans to issue Policy Credits to its tax-qualified retirement contracts in connection with its proposed demutualization transaction that:

17. The Demutualization will have no effect on the date each life insurance or

annuity contract transferred to Sub 2 was issued, entered into, purchased or came into existence for purposes of §§ 72(e)(5), 401, 402, 403, 408, and 408A. The Demutualization will not require retesting or the starting of new test periods for the contracts under section 408A(d)(2)(B)(I).

18. Neither the addition of a Policy Credit nor the right thereto will constitute a distribution in violation of § 403(b)(11) or otherwise disqualify a TSA Contract under § 403(b).

19. The addition of a Policy Credit to a TSA Contract, IRA Contract or Qualified Plan Contract will not constitute a distribution thereunder nor a contribution thereto, and thus will not result in (a) any gross income to the employee or other beneficiary of such a contract as a distribution from a qualified retirement plan under § 72, 402, 403, or 408 prior to an actual receipt of some amount thereof by such employee or beneficiary; (b) any 10 percent or 25 percent additional penalty tax under § 72(t) for premature distributions from a qualified retirement plan; (c) any 6 percent or 10 percent excise tax under § 4973 or § 4979 for excess contributions to certain qualified retirement plans; or (d) any designated distribution under § 3405(e)(1)(A) that is subject to withholding under § 3405(b) or (c).

20. The addition of Policy Credits will not result current taxable income to the TSA Contract, IRA Contract or Qualified Plan policyholders or annuitants but will be includible in the taxable income of the distributee, in the taxable year of actual distribution, pursuant to § 72(a) or 72(e), whichever is applicable.

21. For purposes of determining the tax basis or investment in the contract under § 72 for a TSA Contract, IRA Contract, or Qualified Plan Contract in Trust, a Policy Credit will not be taken into account.

22. For purposes of the minimum distribution requirements under § 401(a)(9), § 403(b)(10), § 408(a)(6) or § 408(b)(3), a Policy Credit will constitute investment earnings attributable to the year in which it is added to the account value.

23. For purposes of the § 403(b)(11) restrictions on distributions attributable to contributions under salary reduction arrangements and the income thereon, a pro rata portion of a Policy Credit added to a TSA Contract to which such contributions have been made will constitute earnings attributable to such contributions for the year in which the Policy Credit is made.

The rulings provided herein are based upon the assumption that the plans described are tax-sheltered annuity plans that meet the requirements of § 403(b) of the Code, or IRAs that meet the requirements of § 408(a), 408(b), or 408A.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the factual information, representations, and other data may be required as part of the audit process.

Except as specifically provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. No opinion is expressed with respect to whether any of the above-described foreign corporations (Fcorp and Holding) are passive foreign investment companies within the meaning of § 1297(a) and any related regulations. If it is determined that any of the above-described foreign corporations are passive foreign investment companies, no opinion is expressed regarding the application of §§ 1291 through 1298 on the proposed transaction. In particular, in a transaction in which gain is not otherwise recognized, regulations under § 1291(f) may impose gain recognition notwithstanding any other provision of the Code. No opinion is hereby expressed as to the eligible status of any particular § 457 plan holding assets invested in Fcorp and Sub 2 insurance or annuity contracts.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,

Philip J. Levine
Assistant Chief Counsel

By: _____
Lewis K Brickates
Assistant to the Branch Chief, Branch 2