200352016

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 29 2003

UICs:	72.00-00	933.00-00	6047.00-00
	402.00-00	3405.00-00	6046.04-00
	414.06-00	6041.00-00	
	501.00-00	6041.04-00	

T:EP:RA:T3

LEGEND:

Company A:

Company B:

Commonwealth C:

Plan W:

Plan X:

Plan Z:

Date 1:

Date 2:

Date 3:

Trustee D:

Trustee E:

Ladies and Gentlemen:

This letter ruling is in response to a ruling request on behalf of the above-named Taxpayer dated , as supplemented, in which said Taxpayer requests letter rulings under sections 414(l), 72, 401(k), 402, 501(a), 933, 3405, 6041, 6041A, and 6047(d) of the Internal Revenue Code. This letter ruling is based on the following facts and representations.

Facts

Company A is the sponsor of Plan W and Plan X. Plan W is a profit-sharing plan with a cash or deferred arrangement under section 401(k) of the Code. Plan W is qualified within the meaning of Code § 401(a). Plan W is also qualified and exempt from taxation under section 1165(a) of

the Commonwealth C Internal Revenue Code of 1994, as amended (the "Commonwealth C Code").

Plan X is a profit-sharing plan with a cash or deferred arrangement and is intended to qualify under section 1165(a) of the Commonwealth C Code. Plan X has been submitted to the Commonwealth C Department of Treasury for a determination as to its qualified status. On Date 3, 2003, Plan X received a determination Letter stating that it is qualified under the Commonwealth C Code. Participation in Plan X is limited to employees of Company A or its affiliates who reside within Commonwealth C. Company A represents that Plan X is covered under Title I of the Employee Retirement Income Act of 1974, as amended (ERISA). Section 12.04 of Plan X provides that if the plan undergoes a partial termination the amounts outstanding to the participant's credit shall be payable.

Company A represents that the administrator of Plan X has not and does not intend to make any election, on behalf of Plan X, under § 1022(i)(2) of ERISA, to be treated as a trust created or organized in the United States for purposes of Code section 401(a).

Plan Z was a profit-sharing plan with a cash or deferred arrangement that qualified under section 401(a) of the Code and whose trust was exempt from taxation under section 501(a) of the Code. Plan Z was qualified under the Commonwealth C Code. Your authorized representative has asserted that the trust of Plan Z was a domestic trust within the meaning of Code § 7701(a)(30) and related regulations.

Effective Date 1, 2000, Company A acquired Company B and assumed sponsorship of Plan Z. Effective Date 2, 2001, Plan Z was merged into Plan W (the "Merger"). Also effective Date 2, 2001, participants in Plan W and Plan Z who before the date of the Merger were performing services for Company A in Commonwealth C became eligible to participate in Plan X and ceased to be eligible to receive any future contributions under Plan W.

Company A proposes to transfer the account balances of current and former employees who performed services entirely in Commonwealth C during their respective terms of employment (the "Commonwealth C" participants") from Plan W to Plan X. This proposed transfer (the "Proposed Transfer") will occur via a trustee-to-trustee transfer directly from Trustee D, the trustee of Plan W, to Trustee E, the trustee of Plan X. No assets will either be delivered or paid directly to any of the Commonwealth C participants in connection with the transfer.

As of Date 2, 2001, 1045 Commonwealth C participants held account balances in Plan W. Of this total, 176 were Commonwealth C participants who originally participated in the pre-Merger Plan W and 869 were Commonwealth C participants who originally participated in Plan Z.

The trust under which the transferred assets will be held will be organized under the laws of Commonwealth C. Under § 1022(i)(1) of ERISA, the trust will be treated for purposes of Code § 501(a) as if it were an organization in Code § 401(a).

Company A represents that the Commonwealth C participants are, and were, bona fide residents of Commonwealth C during their term of employment with Company A or its affiliates and are also United States citizens.

Company A's authorized representative has asserted that the employer contributions (excluding earnings and any employee after-tax contributions) credited to the account of any Commonwealth C participant prior to Date 2, 2001 under either Plan Z or the pre-Merger Plan W, as applicable, relate to services performed entirely in Commonwealth C. In addition, employer contributions credited to the account of any Commonwealth C participant under Plan X on or following Date 2, 2001, will relate to services performed entirely in Commonwealth C.

Company A's authorized representative has also asserted that the qualified status of Plan X under § 1165(a) of the Commonwealth C Code will not be adversely affected solely by reason of the transfer of account balances of Commonwealth C participants from Plan W to Plan X.

Based on the above facts and representations, you, through your authorized representative, request the following letter rulings:

1. that, for purposes of Code § 501(a), the trust which forms a part of Plan X will be treated as an organization described in Code § 401(a) following the transfer of account balances from Plan W to Plan X provided that Plan X is exempt from income tax under the laws of Commonwealth C;

2. that the transfer of account balances of Commonwealth C participants from Plan W to Plan X will be considered a transfer of assets within the meaning of Code § 414(l);

3. that the transfer of account balances of Commonwealth C participants from Plan W to Plan X will not be considered a distribution from Plan W to affected Commonwealth C participants for purposes of Code sections 72, 401(k) and 402;

4. that the portion of a distribution from an account under Plan X to a Commonwealth C participant that is attributable to any employer contributions credited under either the pre-Merger Plan W, Plan Z, or Plan X (excluding earnings and any employee after-tax contributions) is income derived from sources within Commonwealth C for purposes of Code § 933;

5. that the portion of a distribution from an account under Plan X to a Commonwealth C participant that is attributable to earnings on and accretions to any employer or employee

contributions is income derived from sources within Commonwealth C for purposes of Code § 933;

6. that no portion of a distribution to a Commonwealth C participant from Plan X will be subject to withholding under Code § 3405; and

7. that no information return made either on Form 1099-R or any other form will be required to be filed with the Internal Revenue Service and no related statement will be required to be furnished to any Commonwealth C participant in connection with any distribution from Plan X pursuant to either Code § 6041, 6041A or 6047(d).

With respect to your first ruling request, Code § 501(a) provides, in relevant part, that an organization described in Code § 401(a) shall be exempt from taxation. § 1022(i)(1) of Title I of ERISA provides that, for purposes of Code § 501(a), any trust forming part of a pension, profit-sharing or stock bonus plan all the participants of which are residents of Puerto Rico shall be treated as an organization described in Code § 401(a) if such trust both forms part of a pension, profit-sharing or stock bonus plan and is exempt from income tax under the laws of Puerto Rico.

§ 1.501(a)-1(e) of the Income Tax Regulations provides, in relevant part, that the practical effect of § 1022(i)(1) of ERISA is to exempt those trusts (described therein) from United States income tax on the income from their United States investments. For purposes of § 1022(i)(1) of ERISA, the term "residents of Puerto Rico" means bona fide residents of Puerto Rico and persons who perform labor or services primarily within Puerto Rico, regardless of residence for other purposes, and the term "participants" is restricted to current employees who are not excluded under the eligibility provisions of the plan.

As noted above, Plan X is a profit-sharing plan and its related trust has been submitted to the Commonwealth C Department of Treasury for a determination that it is exempt from income tax under the laws of Commonwealth C. Furthermore, as also noted above, Plan X has received a Determination Letter to that effect. In addition, participation in Plan X has been, is, and will continue to be limited to employees residing in Commonwealth C. Thus, the representations made indicate compliance with the rules and requirements listed above.

Thus, with respect to your initial ruling request, we conclude as follows:

1. that, for purposes of Code § 501(a), the trust which forms a part of Plan X will be treated as an organization described in Code § 401(a) following the transfer of account balances from Plan W to Plan X provided that Plan X is exempt from income tax under the laws of Commonwealth C.

With respect to your second ruling request, Section 414(l)(1) of the Code provides that a trust which forms a part of a plan shall not constitute a qualified trust under Code section 401 and a

plan shall be treated as not described in Code section 403(a) unless in the case of any merger or consolidation of the plan with, or in the case of any transfer of assets or liabilities of such plan to, any other trust plan after September 2, 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated).

Section 1.401(a)-50 of the regulations provides that certain plans created or organized in Puerto Rico whose administrators have made the election referred to in section 1022(i)(2) of ERISA are to be treated as trusts created or organized for purposes of section 401(a).

Section 1.414(l)-1(b)(3) of the regulations provides that a "transfer of assets or liabilities" occurs when there is a diminution of assets or liabilities with respect to one plan and the acquisition of such assets or the assumption of such liabilities by another plan.

Section 1.414(l)-1(d) of the regulations provides that in the case of a merger of two or more defined contribution plans, the requirements of section 414(l) will be satisfied if all of the following conditions are met:

(1) the sum of the account balances in each plan equals the fair market value (determined as of the date of the merger) of the assets of the plan as merged.

(2) The assets of each plan are combined to form the assets of the plan as merged.

(3) Immediately after the merger, each participant in the plan as merged has an account balance equal to the sum of the account balances the participant had in the plans immediately prior to the merger.

Section 1.414(l)-1(m) of the regulations provides that in the case of a spinoff of a defined contribution plan, the requirements of section 414(l) will be satisfied if after the spinoff -----

(1) the sum of the account balances for each of the participants in the resulting plans equals the account balance of the participant in the plan before the spinoff, and

(2) the assets of the plans immediately after the spinoff equals the sum of the account balances for all participants in the plan.

Section 1.414(l)-1(o) of the regulations provides that any transfer of assets or liabilities will for the purposes of section 414(l) be considered as a combination of separate mergers and spinoffs using the rules of paragraphs (d), (e) through (j), (l), (m), or (n) of this section, whichever is appropriate.

Section 1022(i)(1) of ERISA provides that effective for taxable years beginning after December 31, 1973, for purposes of section 501(a) of the Code any trust forming part of a pension, profit-sharing, or stock bonus plan all of the participants of which are residents of the Commonwealth of Puerto Rico shall be treated as an organization described in section 401(a) of such Code if such trust -------

(A) forms part of a pension, profit-sharing, or stock bonus plan, and

(B) is exempt from income tax under the laws of the Commonwealth of Puerto Rico.

Section 1022(i)(2)(A) of ERISA provides if the administrator of a pension, profit-sharing, or stock bonus plan which is created or organized in Puerto Rico elects, at such time and in such manner as the Secretary of the Treasury may require, to have the provisions of, and amendments made by, Title II of this Act apply, for plan years beginning after the date of election any trust forming a part of such plan shall be treated as a trust created or organized in the United States for purposes of section 401(a) of the Internal Revenue Code of 1954.

With respect to your second ruling request, the transfer of the Commonwealth C participants' account balances from Plan W to Plan X is a transfer of assets and liabilities where there is a diminution of assets and liabilities with respect to one plan and the acquisition and assumption of such assets and liabilities by another plan. Thus, the Proposed Transfer is a transfer of assets and liabilities within the meaning of sections 1.414(l)-(1)(b)(3) and (o) of the regulations.

Section 1.414(l)-1(o) of the regulations provides that the Proposed Transfer must be considered for the purposes of section 414(l) as a spinoff, satisfying the requirements of section1.414(l)-1(m), of a defined contribution plan from Plan W followed by a merger, satisfying the requirements of § 1.414(l)-1(d), of such spun off plan with Plan X. In effect, these regulations require that immediately after the Proposed Transfer the account balances of each of the participants in Plan X must be equal to the sum of the account balances each such participant had in Plan W and in Plan X immediately before the Proposed Transfer. In the current instance, such would be the case after the Proposed Transfer.

In the current instance the administrator of Plan X has not and does not intend to make the election to be treated as a trust created or organized in the United States for purposes of Code section 401(a). However, it is represented that Plan X is covered under Title I of ERISA. In addition, Plan X contains language protecting the section 411(d)(3) partial termination rights of the plan participants.

Section 414(l) of the Code is concerned with the rights of the participant upon plan termination before and after the transfer of assets and liabilities. In the case of any transfer of assets from a plan qualified under section 401(a) to any other trust plan each participant must be entitled to receive a benefit and associated rights upon plan termination immediately after the transfer equal

to the benefit and associated rights he would have been entitled to receive immediately before the transfer. In the current instance, each participant would have an account balance immediately after the Proposed Transfer equal to his/her account balance(s) immediately before the Proposed Transfer. In addition, the plan participants, either through Title I coverage or plan language, would have all associated rights upon plan termination immediately after the transfer equal to their associated rights immediately before the transfer. Thus, in our view the benefit immediately after the Proposed Transfer is equal to the benefit immediately before the Proposed Transfer and the transfer of Commonwealth C participants' account balances from Plan W to Plan X satisfies section 414(l) of the Code.

Thus, with respect to your second ruling request, we conclude as follows:

2. that the transfer of account balances of Commonwealth C participants from Plan W to Plan X will be considered a transfer of assets within the meaning of Code § 414(l).

With respect to your third ruling request, Code § 402(a) provides, in relevant part, that any amount actually distributed to any distributee by a qualified trust shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under § 72.

Code § 72(a) provides, in short, that gross income includes any amount received as an annuity.

Code § 72(d)(1) sets down special rules applicable to amounts received as annuities from qualified employer retirement plans.

Code § 72(e) provides rules governing the taxation of amounts not received as annuities. In relevant part, Code § 72(e) governs distributions from qualified retirement plans.

Code § 72(t)(1) provides that if any taxpayer receives any amount from a qualified retirement plan as defined in Code § 4974(c) (which includes a plan described in Code § 401(a) which includes a trust described in Code § 501(a)), the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income. Certain exceptions to the additional income tax imposed by Code § 72(t)(1) are enumerated in Code § 72(t)(2).

Code § 402(b)(1) provides, in relevant part, that contributions to an employees' trust made by an employer during a taxable year of the employer which ends with or within a taxable year of the trust for which the trust is not exempt shall be included in the gross income of the employee in accordance with § 83.

Code § 401(k) sets down rules applicable to qualified cash or deferred arrangements. Code § 401(k)(2)(B)(i) provides, in relevant part, that a qualified cash or deferred arrangement which is part of a profit-sharing plan under which amounts held by its related trust which are attributable

to employer contributions made pursuant to the employee's election may not be distributable to participants or other beneficiaries earlier than (1) separation from service, death or disability; (2) an event described in § 401(k)(10); (3) the attainment of age 59 ½; or (4) upon financial hardship of the employee.

Revenue Ruling 67-213, 1967-2 C.B. 149, holds that where the interests of participants are transferred from a trust forming part of one qualified plan to a trust forming part of another qualified plan, no amounts will be considered distributed or made available to the participants by reason of their transfer.

Under Code § 402(a), a participant's interest in a trust forming part of a qualified plan is includible in income in the taxable year in which it is distributed from the trust. Thus, generally, transfer of amounts held in the trust of a plan qualified within the meaning of Code § 401(a) to the trust of a plan not qualified will give rise to a taxable distribution.

However, under Rev. Rul. 67-213, a transfer of the participant's interest from one qualified trust to a trust forming part of another qualified plan would not be a distribution of that interest. A similar conclusion would be reached if one qualified plan is merged into another such plan.

In this case, the substance of the proposed transaction is that account balances held in a Code § 401(a) qualified plan and its related trust (Plan W) will be transferred to a nonqualified plan the trust of which is deemed qualified pursuant to § 1022(i)(1) of ERISA for purposes of exemption under Code § 501(a) (Plan X). Thus, the issue raised in this case is whether a result similar to that reached under Rev. Rul. 67-213 would be reached if the transferee plan is not a Code § 401(a) qualified plan even though its trust is treated as meeting the requirements of Code § 501(a).

Upon careful consideration of this issue, we believe that it is appropriate to deem a plan that is described in ERISA § 1022(i)(1) as a qualified transferee plan for the limited purposes of complying with Rev. Rul. 67-213 since its associated trust is tax-exempt under Code § 501(a) as if it were a qualified trust described in Code § 401(a). Accordingly, the transfer of account balances held under Plan W and its related trust into Plan X and its related trust will not give rise to distributions of the account balances of affected Plan W participants from Plan X's related trust. Because the transfer does not give rise to distributions, the account balances at the time that the merger is consummated will not be treated as includible in participants' income pursuant to Code § 402(a).

Thus, with respect to your third ruling request, we conclude as follows:

3. that the transfer of account balances of Commonwealth C participants from Plan W to Plan X will not be considered a distribution from Plan W to affected Commonwealth C participants for purposes of Code sections 72, 401(k) and 402.

With respect to your fourth and fifth ruling requests, Code § 933(1) provides that, in the case of an individual who is a bona fide resident of Puerto Rico during the entire taxable year, income derived from sources within Puerto Rico (other than amounts received for services performed as an employee of the United States or any agency thereof) is excluded from gross income and is exempt from tax under subtitle A of the Code, except that the individual is not allowed as a deduction from gross income any deductions (other than the deduction under § 151, relating to personal exemptions) or any credit properly allocable to or chargeable against amounts excluded from gross income under § 933(a).

Section 1.863-6 of the Income Tax Regulations provides that the principles applied for determining income from sources within and without the United States shall generally be applied for purposes of determining income from sources within and without a possession of the United States.

Code sections 861 through 864 contain rules for sourcing income for services performed within and without the United States, but those sections contain no specific provision regarding the source of income from pensions.

Code § 861(a)(3) provides that compensation for labor or personal services performed within the United States shall be treated as income from sources within the United States, and § 862(a)(3) provides that compensation for labor or personal services performed without the United States shall be treated as income from sources without the United States. Income from services performed partly within and partly without the United States is treated as partly derived from sources within and partly derived from sources without the United States. (See Code § 863(b)).

Revenue Ruling 79-388, 1979-2 C.B. 270, describes the rules for determining the source of distributions from a private employer's qualified pension plan that is located in the United States and pays benefits to a retired nonresident alien individual who earned the right to the payments by performing services both within and without the United States. The revenue ruling provides that such pension distributions must be allocated between United States and foreign source income as follows: (i) the portion of each distribution attributable to employer contributions with respect to services performed within the United States is income from United States sources; (ii) the portion of each distribution attributable to employer contributions with respect to services performed without the United States is income from foreign sources; and (iii) the portion of each distribution attributable to earnings on or accretions to employer contributions is income from United States sources.

In Rev. Rul. 79-389, 1979-2 C.B. 281, the Internal Revenue Service held for purposes of the Code § 904 limitation that the same allocation method applies to a United States citizen receiving pension distributions in respect of services performed partly within and partly without the United States.

The rationale for sourcing the earnings and accretions portion of the distribution in the United States was based, in part, on the legislative history of Code § 871(f) (pertaining to certain annuities paid to nonresident aliens under qualified plans), which states that in cases to which § 871(f) does not apply a nonresident alien receiving pension income from a plan located in the United States is subject to United States tax on the interest portion of the pension income notwithstanding that employer contributions are wholly in respect of services performed abroad. (1979-2 C.B. at 271). In addition, the International Tax Counsel at the time the ruling was issued made a policy decision that a rule sourcing the earnings and accretions portion of the distribution on the basis of where the services were performed, instead of where the trust was sited, would "represent an unwarranted transmutation of a provision for tax deferral into one which unilaterally concedes primary tax jurisdiction on certain United States source income to foreign taxing authorities". (See G.C.M. 38007, July 10, 1979).

The Court of Federal Claims upheld the Rev. Rul. 79-388 rule for sourcing the earnings and accretions portion of a distribution from a United States plan in Clayton v. United States, 33 Fed. Cl. 628 (1995), aff'd without published opinion, 91 F.3d 170 (Fed. Cir.), cert. denied, 519 U.S. 1040 (1996).

§ 1.401(a)-50(d) of the Income Tax Regulations provides a special rule for distributions to participants and beneficiaries residing outside the United States from a Puerto Rican trust that has made an election under § 1022(i)(2) of ERISA to be treated as a trust created or organized in the United States for purposes of § 401(a). The source of the portion of the distribution representing employer contributions is where the services giving rise to the contributions were performed. The remaining portion, which represents earnings and accretions, is treated as income from sources without the United States. Id. A memorandum prepared at the time this regulation was being proposed stated that the determination of the source of distributions from an electing Puerto Rican plan corresponds to the determination of the source of distributions from a United States plan as described in G.C.M. 38007, Rev. Rul. 79-388, and Rev. Rul. 79-389. (Memorandum from Jerome D. Sebastian, Acting Chief Counsel, by Jonathan P. Marget, Acting Director, Employee Plans and Exempt Organizations Division, to Honorable Roscoe L. Egger, Jr., Commissioner of Internal Revenue (May 7, 1981), available in LEXIS (1981 TM LEXIS 50). The memorandum explained that the source of earnings and accretions "should be that of the situs of the trust, and the situs of a trust under an electing plan is Puerto Rico". Id.

With specific respect to your fourth ruling request, Company A has represented that all of the employer contributions credited to the account of any Commonwealth C participant under either the pre-Merger Plan W, Plan Z, or Plan X relate to services performed entirely in Commonwealth C. Accordingly, with respect to ruling request four, we conclude that, pursuant to Rev. Rul. 79-388, the portion of a distribution from an account under Plan X to a Commonwealth C participant that is attributable to any employer contributions credited under

either the pre-Merger Plan W, Plan Z, or Plan X (excluding earnings and any employee after-tax contributions) is income from sources within Commonwealth C for purposes of Code § 933.

With specific respect to your fifth ruling request, the trust that forms a part of Plan X will be treated as an organization described in Code § 401(a) for purposes of Code § 501(a) following the transfer of account balances from Plan W to Plan X, provided that Plan X is and continues to be tax exempt under the laws of Commonwealth C. (See ERISA § 1022(i)(1)). Thus, distributions from Plan X to Commonwealth C participants will be distributions from a trust that is exempt from United States income tax on the income from its United States investments. Under these circumstances, it is appropriate to source the earnings and accretions portion of each distribution based on the situs of the trust at the time of the distribution.

Therefore, with respect to your fifth ruling request, we conclude that the portion of a distribution from an account under Plan X to a Commonwealth C participant who performed services only in Commonwealth C that is attributable to earnings on and accretions to any employer or employee contributions is income derived from sources within Commonwealth C for purposes of Code § 933.

With respect to your sixth ruling request, Code § 3405 generally provides that the payor of a designated distribution shall withhold from such payment a stated portion of such distribution. In the case where such designated distribution is a periodic payment or a nonperiodic payment (other than an eligible rollover distribution), the distributee may elect out of such withholding. Code § 3405(e)(13) provides, in effect, that such election is available for any periodic or nonperiodic distribution which is to be delivered within any possession of the United States. However, in the case of any designated distribution which is an eligible rollover distribution, no such election is available, and the payor of such distribution shall withhold an amount equal to 20 percent of such distribution (unless the distributee elects to have the distribution directly rolled over to an eligible retirement plan). (See Code § 3405(c) and § 35.3405(c)-1, Q&A-1 and Q&A-2 of the Treasury Regulations).

Code § 3405(e)(10) and § 35.3405-1T, Qs&As D-1 through D-34, of the Temporary Employment Tax Regulations set forth various rules relating to the requirements and election procedures regarding elections out of withholding with which the payor must comply for periodic and nonperiodic payments as well as designated distributions generally.

Code § 3405(e)(1)(A)(i) defines a "designated distribution" as any payment or distribution from or under an employer deferred compensation plan, an individual retirement plan, or a commercial annuity. Under § 3405(e)(1)(B)(ii), the term "designated distribution" does not include the portion of a distribution or payment which it is reasonable to believe is not includible in gross income. (See § 35.3405-1T, Q&A A-2, of the Temporary Employment Tax Regulations).

A distribution from Plan X to an affected Plan X participant will be comprised of amounts attributable to: (a) employer contributions relating entirely to services performed for the company or its affiliates within Commonwealth C; (b) employee contributions made on an after-tax basis; and (c) earnings on or accretions to such employer and employee contributions, which, in each case, will be distributed from a qualified trust, the situs of which is Commonwealth C. Based upon the analyses discussed above with respect to rulings 4 and 5, it is reasonable to believe that no amount of any distribution to a Commonwealth C participant from Plan X will be includible in gross income by reason of the application of § 933 of the Code.

Thus, with respect to your sixth ruling request, we conclude as follows: that no amount of any distribution to a Commonwealth C participant from Plan X will be subject to withholding under Code § 3405 without regard to whether such distribution is considered a periodic payment, a nonperiodic payment or an eligible rollover distribution.

With respect to your seventh ruling request, Code § 6041(a) provides, in relevant part, that all persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable gains, profits, and income...of $600 or more in any taxable year...shall render a true and accurate return to the Secretary, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary.

Code § 6041(d) provides, in relevant part, that every person required to make a return under subsection (a) shall furnish to each person with respect to whom such return is required a written statement showing the name, address, and phone number of the information contact of the person required to make such return, and the aggregate amount of payments to the person required to be shown on the return.

Code § 6041A(a) provides, in relevant part, that if any service-recipient engaged in a trade or business pays in the course of such trade or business during any calendar year remuneration to any person for services performed by such person, and the aggregate of such remuneration paid to such person is $600 or more, then the service-recipient shall make a return, according to the forms or regulations prescribed by the Secretary.

§ 1.6041-2(b)(1) of the Income Tax Regulations provides, in relevant part, that amounts which are distributed or made available to a beneficiary and to which Code § 402 (relating to employees' trusts) or § 403 (relating to employee annuity plans) applies shall be reported on Forms 1096 and 1099 to the extent such amounts are includible in the gross income of such beneficiary if the amounts so includible aggregate $600 or more in any calendar year.

§ 1.6041-1(a)(2) of the Income Tax Regulations provides, in relevant part, that where a Form 1099 is required to be filed, a separate Form 1099 shall be furnished for each applicable person to whom payments are made.

Code § 6047(d) provides, in relevant part, that the Secretary shall, by forms or regulations, require that an employer maintaining a plan from which designated distributions (as defined in § 3405(e)(1)) may be made, make returns and reports regarding such plan to the Secretary) and to the participants and beneficiaries of such plan. Furthermore, no return or report may be required under the preceding sentence with respect to distributions to any person during any year unless such distributions aggregate $10 or more.

§ 35.3405-1 of the Employment Tax Regulations, Q&A E-8, provides that compliance with the reporting requirements of § 6047(d) is required whenever there is a designated distribution to which Code § 3405 applies. Therefore, the "old law rule that distributions of less than $600 per year do not require reporting" no longer applies. § 35.3405-1 of the regulations, Q&A E-9, provides that the reporting requirements will be satisfied if Form 1099 is filed with respect to each payee in the absence of other forms and regulations.

With respect to your seventh ruling request, this letter ruling has concluded in its response to your fourth ruling request that the portion of a distribution under Plan X to a Commonwealth C participant that is attributable to any employer contributions credited under either the pre-Merger Plan W, Plan Z, or Plan X (excluding earnings and any employee after-tax contributions) will be income from sources within Commonwealth C for purposes of Code § 933. In its response to your fifth ruling request, this letter ruling has concluded that the earnings and accretions portion of a distribution under Plan X to a Commonwealth C participant who performed services only in Commonwealth C will be sourced solely within Commonwealth C.

Thus, with respect to your seventh ruling request, we conclude as follows: that Trustee E will not be required to report payments from Plan X on Form 1099 or any other form required to be filed with the Internal Revenue Service and no related statement will be required to be furnished to any Commonwealth C participant in connection with any distribution from Plan X pursuant to either Code § 6041or 6041A. Additionally, with respect to your seventh ruling request, we have concluded in response to your sixth ruling request that no portion of a Plan X distribution made to an affected Plan X participant is subject to the withholding rules of Code § 3405. Thus, with further respect to your seventh ruling request, the Service concludes that since no portion of a distribution from Plan X to an affected participant/distributee is subject to the withholding rules of Code § 3405, no portion of such distribution is subject to the requirements of Code § 6047(d).

This ruling letter is based on the facts and representations contained herein. Specifically, it assumes that Plan W is qualified within the meaning of Code § 401(a), as asserted, and that Plan X is qualified within the meaning of § 1165(a) of the Commonwealth C Internal Revenue Code.

Additionally, it assumes that Plan Z was qualified within the meaning of Code § 401(a) at all times relevant hereto. Finally, it assumes, as asserted, that the account balances transferred from Plan W to Plan X will not be made available to Commonwealth C participants either prior to, or at the time of, the transfer.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Manager, Employee Plans
Technical Group 3

Enclosures:

Deleted copy of letter ruling
Form 437