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

200407021

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NOV 19 2003

UICs: 411.03-00
411.03-01

Legend:

Company A:

Individual B:

Plan Participant C:

Plan Participant D:

Individual E:

Plan X:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Date 8:

Month 1:

Committee 1:

City 1:

City 2:

City 3:

City 4:

Number 1:

Number 2:

Number 3:

Number 4:

Ladies and Gentlemen:

This is in response to correspondence dated , as supplemented by correspondence dated , , , , , and , in which you, through your authorized representative, request a letter ruling dealing with the requirements of § 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The following facts and representations support your ruling request.

Company A was the sponsor of Plan X, a money purchase pension plan which the ruling request indicates was intended to be qualified within the meaning of Code § 401(a). Prior to 1996, Company A contributed to Plan X on behalf of each participant 15% of that participant's compensation.

On Date 1, 1995, Company A's Committee 1 met and decided to reduce Company A's contribution to Plan X from 15% to 7%. The Date 1, 1995, Corporate Minutes of Company A provide, in pertinent part, that "FURTHER RESOLVED, to change the contribution percentage to the Pension Plan and Trust effective Date 3, 1996 to 7% of an employee's eligible annual compensation and that Individual E is authorized to approve the necessary amendment documents for Company A".

On Date 2, 1996, Company A formally adopted a written amendment to Plan X to provide that its contribution would be reduced from 15% of compensation to 7%. The amendment was effective retroactively to Date 3, 1996.

Your authorized representative asserts that on or about Date 4, 1995, each Plan X participant received a memorandum by E-Mail from Individual B, the Director of

Administration of Company A, announcing a series of meetings to discuss changes to Company A's compensation and benefits including changes to its retirement plans.

During Month 1, 1995, after the Committee 1 meeting referenced above, representatives of Company A met with Plan X participants in four locations, Cities 1 through 4, to discuss various issues including Company A's proposed reduction in its contributions to Plan X. The meetings include one held on Date 5, 1995, in City 1 and one held on Date 6, 1995 in City 2. The last two meetings were held on Date 7, 1995. Your authorized representative asserts, on your behalf, that at each of the meetings, the representatives gave a Power Point presentation that, in pertinent part, dealt with the change in contribution rate to Plan X. Your authorized representative has also asserted that paper copies of the Power Point presentation were available for the attendees at each meeting site, and that every attendee at each of the meetings could have received a copy of the Power Point presentation at the meeting.

Your authorized representative asserts that the four meetings were conducted by various officers of Company A including its Vice chairman/Chief Operating Officer and Director of Administration. Your representative also asserts that at the time of the meetings, Company A had Number 1 employees in City 1, Number 2 employees in City 2, Number 3 employees in City 3, and Number 4 employees in City 4. Finally, he asserts that 100% of affected Plan X participants attended the meetings in Cities 3 and 4, and most, if not all, affected Plan X participants attended the meetings in Cities 1 and 2.

Your letter ruling submission file contains hand-written notes dated Date 5, 1995, that your authorized representative asserts were taken by a Plan X participant who attended the meeting in City 1, in which the participant indicates that Company A's contributions to Plan X were to be reduced from 15% to 7%.

On or about Date 8, 1996, Company A hand delivered and sent by E-Mail a written notice to each Plan X participant informing the participants of the reduction to 7% of its contributions to Plan X.

Your ruling request also contains affidavits from Plan Participant C and Plan Participant D. Plan Participant C indicates that he attended the City 2 meeting and recalls a Power Point presentation which provided, in pertinent part, that Company A contributions to Plan X would be reduced from 15% to 7%. Furthermore, he indicates that he understood the reduction would be effective Date 3, 1996. Plan Participant D indicates that he attended the City 1 meeting and recalls a Power Point presentation which provided, in pertinent part, that Company A contributions to Plan X would be reduced from 15% to 7%. Furthermore, he indicates that he understood the reduction would be effective Date 3, 1996.

The affidavits of both Plan Participant C and Plan Participant D indicate, in relevant part, that "...a printed copy of the Power Point presentation was available to any employee who requested it".

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

> That the above notification to affected Plan X participants of the reduction of Company A contributions to Plan X satisfied the § 204(h) requirements in effect during 1996?

With respect to your ruling request, § 204(h) of ERISA, as in effect during the period 1996-1998, provided, in pertinent part, as follows:

(h) Notice of significant reduction in benefit accruals.

(1) A plan described in paragraph (2) may not be amended so as to provide for a significant reduction in the rate of future benefit accrual, unless, after adoption of the plan amendment and not less than 15 days before the effective date of the plan amendment, the plan administrator provides a written notice, setting forth the plan amendment and its effective date, to –

(A) each participant in the plan,

(B) each beneficiary who is an alternate payee (within the meaning of § 206(d)(3)(K) under an applicable qualified domestic relations order (within the meaning of § 206(d)(3)(B)(i), and

(C) each employee organization representing participants in the plan,

except that such notice shall instead be provided to a person designated, in writing, to receive such notice on behalf of any person referred to in paragraph (1), (2), or (3).

Temporary Regulations under § 1.411(d)-6T were in effect with respect to 1996 plan amendments. Although Final Regulations were published during 1998, these Final Regulations, at Question and Answer-17, provided that the Temporary Regulations would govern plan amendments adopted on or after December 15, 1995 and before December 12, 1998. Q&A-1(a) of the operative Temporary Regulations provides, in relevant part, that, to be valid, a § 204(h) Notice had to have been provided after adopting a plan amendment and not less than 15 days before the effective date of the amendment.

Q&A-11 of the Temporary Regulations provides, in summary, that a plan administrator may use any method reasonably calculated to ensure actual receipt of the § 204(h) notice.

Q&A-12 of the Temporary Regulations provides, in pertinent part, that a plan administrator will be considered to have complied with § 204(h) of ERISA with respect to a participant to whom § 204(h) is required to be provided if the participant and any employee organization representing the participant were provided with timely § 204(h) notice. The same rule applies with respect to alternate payees.

Q&A-13 of the Temporary Regulations provides that a plan will be considered to have complied with § 204(h) of ERISA if the plan administrator – (a) has made a good faith effort to comply with the requirements of § 204(h); (b) has provided the § 204(h) notice to each employee organization that represents any participant to whom the § 204(h) notice is required to be provided; (c) has failed to provide the § 204(h) notice to no more than a de minimis percentage of participants and alternate payees; and (d) provides § 204(h) notice to overlooked participants and alternate employees promptly upon discovering any oversight.

With respect to the Month 1, 1995, briefings, said briefings took place prior to the date (Date 2, 1996) the Plan X amendment was formally adopted (not after as required by the Temporary Regulations). With respect to the Date 8, 1996, written notice, said notice was provided after the effective date of the amendment (and not before the effective date as required by the temporary regulations). However, the Service notes that the reduction in the amount of Company A's contributions to Plan X was discussed by Committee 1 at its Date 1, 1995 meeting which preceded the Month 1, 1995 Power Point presentations to affected Plan X participants.

With respect to this ruling request, we note the case of Copeland v. Geddes Federal Savings & Loan Association, 62 F. Supp. 2d 673 (N.D.N.Y. 1999). The fact pattern in Geddes is similar to that presented in this ruling request. In Geddes, the Court indicated that if a plan amendment provides for retroactive effect, it is impossible for that plan sponsor to give timely 204(h) notification under the relevant Regulations. The Service notes, however, that Geddes, did not deal with the issue as to whether a resolution of corporate officers could constitute a Plan amendment for § 204(h) purposes.

The Service also notes the Supreme Court case of Curtiss-Wright Corporation v. Frank C. Shoonejongen, 514 U.S. 73 (1995) which your authorized representative asserts stands for the proposition that since Committee 1's actions during the Date 1, 1995 meeting bound Company A, said meeting should be viewed as effectively amending Plan X even if formal, written, amendment did not occur until Date 2, 1996.

After considering the issue, we believe that it is appropriate to treat the amendment to reduce Plan X contributions as having been adopted at the Date 1, 1995 Committee 1 meeting. Thus, having concluded as such, we must then deal with the three distinct, related issues presented in this ruling request.

Initially, the Service must decide if the briefings at which Power Point presentations were made and at which affected Plan X participants were given the opportunity to receive copies of the said Power Point presentations represent adequate, written notice. With respect to this issue, we note that not only were the Plan X participants present at the Power Point briefings able to take notes, as shown by the hand written notes taken by a Plan X participant/attendee presented to us, but that, as noted above, paper copies of the Power Point presentation were available for the participants/attendees. Thus, each Plan X briefing attendee could have received a copy of the briefing at the meeting if he/she so chose. Thus, since paper copies of the presentation existed for the use of the attendees, we believe that it is appropriate to treat the Power Point presentation(s) as constituting adequate notice within the meaning of the applicable temporary regulations.

Secondly, since the first issue was answered in the affirmative, we now have to decide if the notice was timely. With respect to this issue, we note our above conclusion that the amendment to reduce Plan X contributions was adopted on Date 1, 1995 for ERISA section 204(h) purposes. The dates on which the Power Point presentations were held, Dates 5 through 7, 1995, were after Date 1, 1995. Furthermore, each of the Power Point presentations was given no less than 15 days prior to the effective date of the amendment to reduce Plan X contributions, Date 3, 1996. Thus, the Power Point presentations were timely.

Finally, the Service must decide if there has been compliance with the rule of Q&A-13 of the temporary regulations which, in summary, requires that steps be taken to ensure that all affected plan participants receive § 204(h) notice, even if not timely, in order for an amendment to have blanket effect. As noted above, representations have been made that most, but not all, affected Plan X participants attended the Power Point presentations.

With respect to this third issue, we note that four Power Point presentations were held to discuss, among other issues, the reduction in Plan X contributions. We also note that Company A took steps, including the Date 4, 1995 E-Mail messages referenced above, to notify affected Plan X participants of the Power Point presentations. Furthermore, we note that most of the affected Plan X participants did attend the briefings and, that, the few remaining had notice of the briefings and the opportunity to either attend a briefing, or receive information of what had transpired at the briefings by other means-i.e. by requesting copies of the Power Point presentations, by communicating by E-Mail as to the substance of the briefings. Furthermore, it has been represented that all Plan X participants received the Date 8, 1996 written notice referenced above. Thus, based on the information submitted with your ruling request, we have determined that there has been compliance with Q&A-13 of the temporary regulations and that the affected Plan X participants did receive adequate notice of the reduction in Plan X contributions.

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

That the above notification to affected Plan X participants of the reduction of Company A contributions to Plan X satisfied the § 204(h) requirements in effect during 1996.

Please note that this ruling letter assumes the correctness of all factual representations contained therein. Additionally, the representations made herein, like all factual representations made to the Internal Revenue Service in applications for rulings, are subject to verification on audit by Service field personnel.

Additionally, please note that this letter ruling does not address issues that may arise under § 4980F of the Code and § 54.4980F-1 of the final regulations that were published in the Federal Register on April 9, 2003, at 68 Federal Register 17277-17291.

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

If you have any questions regarding this ruling letter, please contact of this Group at (phone) or (FAX).

Sincerely yours,

Frances V. Sloan

Frances V. Sloan, Manager,
Employee Plans Technical Group 3

Enclosures:
Deleted copy of letter
Notice of Intention to Disclose