200410022

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

VIL 415.00-00

DEC - 8 2003

T:EP:RA:T3

LEGEND:

System A:

Excess Plan B:

Board X:

State M:

This is in response to your request for a private letter ruling, dated May 2, 2003, as supplemented by letters dated June 10, July 23, September 19 and 30, October 29 and November 3 and 5, 2003 concerning the applicability of section 415(m) of the Internal Revenue Code ("Code") to Excess Plan B. You have submitted the following facts and representations in support of your request.

System A is a defined benefit retirement plan maintained for the benefit of the employees of State M and participating employers (i.e. various agencies and instrumentalities of State M). System A is designed to meet the requirements of section 401(a) and 415(b) of the Code. System A is a governmental plan within the meaning of section 414(d) of the Code. Board X administers System A and serves as trustee of System A.

Pursuant to an act of the General Assembly of State M, Board X is required to establish a governmental excess benefit arrangement (Excess Plan B) that conforms with section

415(m) of the Code. Board X is authorized to determine all terms and conditions of Excess Plan B. It is anticipated that over one hundred distinct governmental entities (employers) will make contributions to Excess Plan B.

Excess Plan B limits participation to those participants in System A whose retirement benefits under System A exceed the limitations imposed on annual retirement benefits by section 415(b) of the Code. Participation in Excess Plan B ceases for any plan year in which a participant's retirement benefit under System A does not exceed the limitations imposed by section 415 of the Code. A participant in Excess Plan B shall receive a monthly annuity equal to the amount by which the participant's monthly annuity otherwise payable under the terms of System A exceeds the limitations imposed by section 415. A beneficiary, to whom a lump sum is payable under System A, shall receive a lump sum from Excess Plan B equal to the amount by which the lump sum payable from System A exceeds the lump sum payable after application of the limitations on benefits imposed by section 415 of the Code. A monthly annuity or death benefit may be paid under Excess Plan B only if a corresponding annuity or death benefit limited by section 415 is paid from System A. Participation in Excess Plan B is automatic and mandatory. The form of the benefit paid to an annuitant under Excess Plan B shall be the same as that selected by the annuitant under System A. To the extent that the Excess Plan B trust fund is funded and to the extent administratively feasible, the monthly benefit payment from Excess Plan B shall be paid on the same date as the monthly payment from System A.

Excess Plan B will not permit direct or indirect deferral of compensation by participants.

Excess Plan B includes a separate trust to hold Excess Plan B assets and pay Excess Plan B benefits. The Excess Plan B trust will be a grantor trust for Federal income tax purposes. Board X is the trustee. The trust is separate from the System A trust and is established solely for the purpose of providing benefits otherwise payable under System A but for the limitations of section 415 of the Code. Excess Plan B assets cannot be used to pay benefits liabilities of System A. Similarly, assets of System A will not be used to pay benefit obligations of Excess Plan B.

Inasmuch as Board X administers System A and Excess Plan B and is also trustee of both plans, section 17 of Excess Plan B, as revised, provides that Board X as trustee of Excess Plan B shall implement procedures as are deemed necessary or appropriate for the performance of those administrative duties that specifically relate to Excess Plan B. Such procedures shall include the maintenance of separate accounting and records and may also include separate meetings and the employment of a separate staff. The trustee of Excess Plan B shall administer and record the investment, earnings and income of and charges against the Excess Plan B Trust Fund assets separate and independent of the investment, earnings and income of and charges against the System A trust assets. The assets of Excess Plan B and the assets of System A will not be commingled for investment purposes. The above notwithstanding, the trustee of Excess Plan B may utilize the support services of System A in connection with the performance of its administrative duties. Additionally, the trustee of Excess Plan B may utilize

investment advisory, brokerage and other third party services common to both System A and Excess Plan B. In each case, the trustee of Excess Plan B shall maintain appropriate accounting and invoicing records for those services which are allocable to Excess Plan B.

Excess Plan B is funded one plan year at a time. Section 12 of Excess Plan B, as revised, provides that prior to the first day of the fiscal year of State M, the actuary shall determine an amount necessary to fund the estimated benefits and administrative expenses for the plan year beginning in such fiscal year. Any assets of Excess Benefit Plan B not used to pay benefits for such plan year may be used for the payment of administrative expenses of Excess Plan B, as determined by the trustee. Any monies earned on the Excess Benefit Plan B trust fund shall be income of the Excess Plan B trust fund.

The funding will be based upon two calculations. The first is the projected benefit liabilities which will be incurred over the course of the plan year (the calendar year). The second is the necessary contributions over the "funding period" (the fiscal year of State M, July 1 through June 30, beginning prior to the first day of the applicable plan year). The funding assumptions for a given plan year are based on the plan year immediately preceding the first day of the funding period. The funding amount, as determined by the actuary, is approved by Board X on or before the first day of the funding period. During the funding period, the contributing entities will fund benefit liabilities that are payable during the later overlapping plan year. This methodology can be illustrated by the following example:

> The required funding for the plan year beginning January 1, 2006, is based on data from the plan year ending December 31, 2004. Once this projected liability (which includes a portion attributable to potential lump sum death benefits) is determined, that information will be presented to Board X on or before June 30, 2005. Board X will approve the actuary's assumptions regarding the projected benefit liabilities and determine the contribution obligation of each employer over the fiscal year beginning July 1, 2005. The benefit liabilities of the plan year beginning January 1, 2006, will be funded over the period beginning July 1, 2005, and ending June 30, 2006.

An employer is obligated to contribute to Excess Plan B if one or more of its employees are eligible for membership in System A. The contributions of participating employers are determined as follows: The actuary will determine the total expected annual cost (i.e. the expected dollar amount of benefit payments to be made during the plan year) for all participants covered by Excess Plan B during the plan year being funded. That cost is divided by the total projected payroll of all employees in System A during the funding period (the fiscal year of State M beginning the July 1 before the plan year being funded). In this way the actuary determines an average contribution rate as a uniform percentage of payroll. This uniform percentage of payroll will then be charged to all employers whose employees are members of System A during the funding period.

Based on the above facts and representations, you have requested a ruling that Excess Plan B is a qualified governmental excess benefit arrangement within the meaning of section 415(m) of the Code.

Two additional rulings were initially requested but they were subsequently withdrawn.

Code section 415(m) sets forth the treatment of qualified governmental excess benefit arrangements. Code section 415(m)(1) provides in part that, in determining whether a governmental plan (as defined in section 414(d)) meets the requirements of section 415, benefits provided under a qualified governmental excess benefit arrangement shall not be taken into account.

Section 415(m)(3) defines such an arrangement as a portion of a governmental plan which meets the following three requirements: (A) such portion is maintained solely for the purpose of providing to participants in the plan that part of the participant's annual benefit otherwise payable under the terms of the plan that exceeds the limitations on benefits imposed by section 415 ("excess benefits"); (B) under such portion no election is provided at any time to the participant (directly or indirectly) to defer compensation; and (C) excess benefits are not paid from a trust forming a part of such governmental plan unless such trust is maintained solely for the purpose of providing such benefits.

With respect to your ruling request, the Excess Plan B is a part of System A, which your authorized representative has stated is a governmental plan as described in Code section 414(d). According to the terms of Excess Plan B, its only stated purpose is to provide participants in System A that portion of a participant's benefits that would otherwise be payable under the terms of System A except for the limitations on benefits imposed by Code section 415. Excess Plan B does not allow participants to defer compensation. The terms of Excess Plan B limit participation to System A participants for whom contributions would exceed the Code section 415 limits. Participation in Excess Plan B ceases for any plan year in which a participant's retirement benefit under System A does not exceed the limitations imposed by section 415 of the Code. Therefore, we have determined that Excess Plan B is a portion of a governmental plan which is maintained solely for the purpose of providing to System A participants that part of the participant's annual benefit otherwise payable under the terms of System A that exceeds the section 415 limits. As such, Excess Plan B meets the requirements of section 415(m)(3)(A).

Your authorized representative has stated, in accordance with the terms of Excess Plan B, that participation is automatic for System A participants for whom benefits are limited by Code section 415. Your authorized representative has also stated that a participant will not be given any election to defer compensation under Excess Plan B either directly or indirectly. Thus, we have concluded that no direct or indirect election is provided at any time to participants to defer compensation and accordingly, the requirements of section 415(m)(3)(B) are met.

Code section 415(m)(3)(C) requires that the trust from which excess benefits are paid must not form a part of the governmental plan (in this case, System A) which contains

the excess benefit arrangement, with a certain exception for trusts maintained solely for the purpose of providing such benefits. In the present case, the Excess Plan B trust is a grantor trust and it is maintained separately from System A. System A will not pay Excess Plan B benefits, and Excess Plan B will not pay System A benefits. Contributions to the Excess Plan B trust consist only of the amount required to pay the excess benefits for the plan year and the amount required to pay administrative expenses. Therefore, we have determined that the requirements of section 415(m)(3)(C) are met.

Since Excess Plan B satisfies all of the requirements of Code section 415(m)(3), we conclude with respect to your requested ruling that Excess Plan B is a qualified governmental excess benefit arrangement within the meaning of Code section 415(m).

This ruling letter is based on the assumption that System A is a governmental plan as described in Code section 414(d) and that it meets all of the applicable requirements under Code section 401(a).

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that this ruling may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representative in accordance with the power of attorney on file in this office.

If you have any questions about this letter, please contact at . Please refer to SE:T:EP:RA:T3.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures
Notice 437
Deleted copy of ruling letter