



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

JAN 25 2007

UICs: 664.00-00  
664.04-00  
415.02-01

T. EP. RA: T3

ATTN:

LEGEND:

Taxpayer A =

Taxpayer B =

Taxpayer C =

Company C =

Plan X =

Trust T =

Bank N =

Date 1 =

Percentage 1 =

Percentage 2 =

Percentage 3 =

Value 1 =

Value 2 =

Dear :

This is in response to the request for letter rulings dated \_\_\_\_\_, as amended, supplemented and restated \_\_\_\_\_, and as further restated and amended \_\_\_\_\_, and as further supplemented on \_\_\_\_\_, in which you, through your authorized representative, request a series of letter rulings under section \_\_\_\_\_

664(g) of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request.

Company C was formed by Taxpayer A during                      Company C maintains Plan X which is a stock bonus plan that is intended to meet the requirements of Code sections 401(a) and 4975(e)(7). Plan X received its most recent favorable determination letter on Date 1, 2002. Several of Company C's subsidiaries have adopted Plan X for the benefit of its employees. Bank N is the current trustee of the trust of Plan X.

Taxpayer A died in                      Prior to his death, during                      Taxpayer A established Trust T.

Trust T provides, in relevant part, for the payment of a specified portion of trust income to Taxpayer B, Taxpayer A's widow, during her lifetime. Upon Taxpayer B's death, Company C stock held by Trust T is to pass to Plan X subject to several conditions. One condition is that Plan X be an organization to which the remainder interest in a charitable remainder trust may pass pursuant to the Code. Taxpayer B was alive as of the date of the most recent amendment and restatement of this request for letter ruling.

The Internal Revenue Service has previously issued a letter ruling to Trust T concluding that Trust T qualified as a charitable remainder trust within the meaning of Code section 664. Furthermore, a qualifying employee stock ownership plan is a permissible recipient of employer securities as the holder of a remainder interest in a charitable remainder trust.

Your authorized representative has asserted that approximately Percentage 1 of the stock of Company C is currently held in Trust T, and approximately Percentage 2 of the stock of Company C is held by Plan X. Taxpayer B holds approximately Percentage 3 of Company C stock.

Taxpayer B is currently the Chairman of the Board of Company C. However, your authorized representative has asserted that Taxpayer B is not a Plan X participant nor is she involved in the day to day management of Company C.

It has been represented that the Company C stock held by Trust T will be transferred to Plan X after the death of Taxpayer B. In this regard, section 2.7(a) of Trust T provides, in relevant part, that as of the Termination Date, the trustee may pay the corpus of the trust in accordance with the direction of the special trustee. "The special trustee may direct the trustee to pay such part or all of the corpus of the trust which shall consist of the stock of Company C, as the special trustee, in its sole and absolute discretion, shall deem proper, to the trustee or trustees, acting at the time, of the Plan X

trust; provided, however, that this gift is conditioned upon the Plan X trust being in existence at the Termination Date..."

Section 1.9 of Trust T, in relevant part, defined "Termination Date" as the (a) death of the survivor of Taxpayer A or Taxpayer B..."

Section 4.1(b) of Trust T provides that Taxpayer C is the "special trustee" of Trust T.

It has been represented on your behalf that the fair market value (FMV) of a share of Company C stock at the date of Taxpayer A's death was approximately Value 1. As of the date of the initial supplementation and restatement of this ruling request, the FMV of a share was approximately Value 2.

Paragraph D of the Introduction to Plan X provides, in relevant part, that Plan X and its related trust are intended to meet the requirements for an employee stock ownership plan under Code section 4975(e)(7), and for a stock bonus plan under Code section 401(a).

Section 1.07 of Plan X provides that the "Board" shall be the present or any succeeding Board of Directors of Company C.

Section 1.11 of Plan X defines "Committee" as "...the group of individuals appointed under Section 7.01".

Section 1.25 of Plan X defines "Forfeitures" as "...the portion of the amount credited to a Participant's Account which does not become part of his Capital Accumulation and is forfeited by him pursuant to Section 5.03".

Section 1.47 of Plan X defines "Valuation Date" as "...the most recent date on which a determination of the Value of Company Stock has been made..."

Section 4.01 of Plan X provides, in relevant part, that as of the last Valuation Date of each Plan Year, there shall be credited to the Company Stock Account of each Participant entitled to an allocation under Section 4.03, his allocable share of forfeitures of Company Stock, if any, occurring during such Plan Year.

Section 4.02 of Plan X, entitled "Other Investment Account", provides, in relevant part, that "...As of the last Valuation Date of each Plan Year, there shall be determined by the Committee and credited to the Other Investment Account of each Participant entitled to an allocation under section 4.03, his share of:

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- (1) Net realized gains (or losses) and cash dividends attributable to Company Stock, if any;
- (2) Employer Contributions in cash;
- (3) Forfeitures, if any, other than Company Stock, during the Plan Year; and
- (4) Net realized and unrealized gains (or losses) and earnings attributable to assets in the Other Investment Accounts held by the Trustee.

Section 4.03(a) of Plan X provides rules which govern the allocation of shares of Employer Contributions and Forfeitures during any Plan year.

Section 4.04 of Plan X sets forth the rules governing the allocation of contributions and limitations thereon under Code section 415.

Section 7.01 of Plan X provides that the "Committee" which administers Plan X shall consist of at least three (3) members appointed by the Board, each of whom shall be a Participant, Employer or member of the Board.

A proposed amendment to Plan X intended, in part, to conform to the requirements of Code section 664(g) accompanied this ruling request. Article III of the proposed amendment amends Section 4.01 of Plan X by providing that Trust T shares shall be allocated to Participants in accordance with Section 4.03, as amended, after first allocating any other annual additions under Plan X for the Plan Year up to the limit set forth in Section 4.04.

Article IV of the proposed amendment revises the second sentence of subsection 4.03(a) of Plan X and adds an additional sentence which provides, in relevant part, the rules governing the allocation of CRT shares or forfeitures for any Plan year under sections 4.01 and 4.02.

Article V of the proposed amendment amends section 4.04 of Plan X by adding a subsection (f) thereto which provides that "...Notwithstanding the foregoing, Annual Additions resulting from the allocation of CRT shares or of forfeitures attributable to CRT shares to a participant's account shall not exceed the limitation set forth in subsection 4.04(a) above and in subsection 4.03(f) above, but shall not be taken into account in determining whether any other amount exceeds such limitation. The Annual Additions attributable to an allocation of CRT shares shall be calculated based on the most recent appraised value of Company Stock as of the effective date of such allocation.

Article VII of the proposed amendment amends section 7.15 of Plan X by providing, in relevant part, that "...Notwithstanding the foregoing, any Company Stock held in the CRT Suspense Account shall be voted by one or more persons serving as the Trustee, provided that each such person qualifies as an independent trustee within the meaning of Section 664(g)(3) of the Code. Provided that each member of the Committee would, if appointed as a Trustee, qualify as such an independent trustee, the Committee may direct the Trustee with respect to the voting of Company stock held in the CRT Suspense Account..."

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

- (1) The above proposed amendment to Plan X will not adversely affect the qualified status of Plan X under Code sections 401(a) and 4975(e)(7);
- (2) For purposes of Code sections 664(g)(3)(A) and (E), and 664(g)(7), allocations of stock from the CRT Suspense Account to the accounts of affected Plan X participants will be valued at the most recent appraised valuation of the stock;
- (3) Allocated shares of Company C stock received from Trust T for which no voting directions are received from participants may be voted by the trustees (of the Plan X trust) in the same manner as unallocated stock; and
- (4) Co-trustees, each independent as defined in Code section 664(g)(3), may be appointed as trustees of Plan X and may exercise voting rights with respect to unallocated Company C stock received from Trust T.

With respect to your ruling requests, Code section 401(a) provides the qualification rules applicable to retirement plans set up by employers exclusively to

benefit their employees and their beneficiaries. Code section 401(a)(4) provides, in short, that contributions or benefits provided under a qualified plan may not discriminate in favor of highly compensated employees (within the meaning of section 414(q)).

Code section 4975(e)(7) provides that an "employee stock ownership plan" (ESOP) is a defined contribution plan—(A) which is a stock bonus plan which is qualified, or a stock bonus plan and a money purchase plan both of which are qualified under section 401(a), and which are designed to invest primarily in qualifying employer securities; and (B) which is otherwise defined in regulations prescribed by the Secretary.

Code section 4975(e)(7) further provides, in relevant part, that an ESOP must meet the requirements of Code section 664(g) (if applicable).

Code section 415, in general, provide limitations on contributions and benefits under qualified plans. Code section 415(c)(6) provides a special rule applicable to ESOPs. In relevant part, Code section 415(c)(6) provides that the amount of any qualified gratuitous transfer (as defined in section 664(g)(1)) allocated to a participant for any limitation year shall not exceed the limitations imposed by this section, but such amount shall not be taken into account in determining whether any other amount exceeds the limitations imposed by this section.

Section 1.415-6(b)(4) of the Income Tax Regulations provides, in relevant part, that, for purposes of this paragraph (Annual Additions with respect to defined contribution plans) a contribution by the employer or employee of property other than cash will be considered to be a contribution in an amount equal to the fair market value (as defined in section 20.2031-1 of the Estate Tax Regulations) of the property on the date the contribution is made.

Code section 664(g) provides the rules governing qualified gratuitous transfers of qualified employer securities to an ESOP. Code section 664(g)(1)(A) provides that such a transfer only applies to securities which had previously passed from a decedent dying before January 1, 1999, to a trust described in paragraph (1) or (2) of subsection (d).

Code section 664(g)(1)(D) provides that a recipient ESOP must treat such securities as being attributable to employer contributions but without regard to the limitations of Code section 404.

Code section 664(g)(3)(A) provides that a plan complies with Code section 664(g) if it provides that qualified employer securities gratuitously transferred to it are allocated to plan participants in a manner consistent with section 401(a)(4).

Code section 664(g)(3)(B) provides that a plan complies with Code section 664(g) if it provides that plan participants are entitled to direct the plan as to the manner in which such securities which are entitled to vote and are allocated to the account of such participant are to be voted.

Code section 664(g)(3)(C) provides that a plan complies with Code section 664(g) if it provides that an independent trustee votes the securities so transferred which are not allocated to plan participants. For purposes of Code section 664(g)(3), an "independent trustee" means any trustee who is not a member of the family (within the meaning of section 2032A(e)(2)) of the decedent or a 5-percent shareholder.

Code section 664(g)(3)(E) provides that a plan complies with Code section 664(g) if it provides that such securities are held in a suspense account under the plan to be allocated each year, up to the applicable limitation under paragraph (7), after first allocating all other annual additions for the limitation year, up to the limitations under sections 415(c) and (e).

Code section 664(g)(7)(A) provides that, for purposes of paragraph (3)(E), the applicable limitation under this paragraph with respect to a participant is an amount equal to the lesser of—(i) \$30,000, or (ii) 25 percent of the participant's compensation (as defined in section 415(c)(3)).

Code section 664(g)(3)(F) provides that a plan complies with Code section 664(g) if it provides that on termination of the plan, all securities so transferred (to the plan) which are not allocated to plan participants as of such termination are to be transferred to, or for the use of, an organization described in Code section 170(c).

Section 868(a) of the Pension Protection Act of 2006, (P.L. 109-280, 120 Stat. 780) ("PPA-2006") amended section 664(g)(3)(E) of the Code by inserting (determined on the basis of fair market value of securities when allocated to participants) after paragraph (7).

Section 868(b) of the PPA-2006 provides that the above amendment is effective as of the date of enactment of the Act (August 17, 2006).

Revenue Ruling 73-583, 1973-2 C.B. 146, held that the amount deductible under section 404(a)(3) of the Code with respect to the contribution of stock to a tax qualified profit-sharing plan by an accrual basis corporation is the fair market value of the stock at the time it is contributed (to the plan) and not the value at the time the liability to make a contribution was accrued on the employer's books.

Rev. Rul. 80-155, 1980-1 C.B. 84, dealt with various issues surrounding the valuation of qualified plan assets with respect to defined contribution plans. In relevant part, Rev. Rul. 80-155 concluded that if the value of amounts to be allocated or distributed was to be ascertainable, a plan must provide for a valuation of trust investments at least once a year on a specified inventory date in accordance with a method consistently followed and uniformly applied.

Rev. Rul. 95-57, 1995-2 C.B. 62, held that an ESOP trustee may vote the shares of stock of a sponsoring employer allocated to the accounts of affected ESOP participants for which no voting directions are timely received. Said voting on the part of the ESOP trustee will not result in the ESOP's failing to comply, in operation, with the pass-through voting requirements of Code section 409(e)(2).

Code section 401(a)(28)(C) requires an ESOP to obtain valuations by an independent appraiser of employer securities which are not readily tradable on an established securities market with respect to activities carried on by the plan.

Title 1, United States Code (U.S.C.), section 1, provides, in relevant part, that "in determining the meaning of any Act of Congress, unless the context indicates otherwise—words importing the singular include and apply to several persons, parties or things..."

With respect to your initial ruling request, section 6.03 of Revenue Procedure 2007-4, 2007-1 I.R.B. 118, 133 (January 2, 2007) provides, in relevant part, that the Employee Plans Technical office ordinarily will not issue letter rulings on matters involving a plan's qualified status under sections 401 through 420 and section 4975(e)(7). These matters are generally handled by the Employee Plans Determinations program.

Your first ruling request asks the Employee Plans Technical office to rule that Plan X's being amended by the proposed amendment referenced herein will not result in Plan X's losing its qualified status under Code sections 401(a) and 4975(e)(7). We believe that such a ruling falls squarely within the limitation on issuance of letter rulings found in section 6.03 of Rev. Proc. 2007-4. Thus, we decline to issue such ruling.

Our refusal to respond to your initial ruling request is not meant to preclude your submitting Plan X and the proposed amendment thereto to the Employee Plans Determination manager (EP Determinations) through the EP Determination Letter program to obtain a determination on Plan X's continued qualified status as amended (see sections 6.04 and 6.17 of Revenue Procedure 2007-6, 2007-1 I.R.B. 189).

With respect to your second letter ruling request, we note that Code section 664(g), as amended by section 868 of the PPA-2006, provides that the valuation to be



used when stock is allocated to the accounts of affected plan participants is the fair market value of the stock at the time it is allocated to the accounts of affected plan participants.

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

(2) For purposes of Code sections 664(g)(3)(A) and (E), and 664(g)(7), allocations of stock from the suspense account, required by Code section 664(g)(3)(E), will be valued at the FMV of the stock at the time the stock is allocated from the CRT Suspense Account associated with Plan X to the accounts of affected Plan X participants.

With specific respect to your third letter ruling request, we note that Code section 664(g) offers no guidance with respect to the appropriate response. However, we also note that Rev. Rul. 95-57, 1995-2 C.B.62 (cited above) offers guidance with respect to non CRT shares for which no voting instructions are received.

We believe that the analysis and rationale found in Rev. Rul. 95-57 is persuasive for purposes of reaching our response to your third ruling request. Thus, with respect to your third ruling request, we conclude as follows:

(3) Shares of Company C stock received from Trust T and allocated from the CRT Suspense Account for which no voting directions are received from participants may be voted by the trustees (of the Plan X trust) in the same manner as unallocated stock.

With specific respect to your fourth ruling request, as noted above, Title I, U.S.C. section 1, in relevant part, provides that words importing the singular are intended to encompass more than one person, party or thing. In this regard, we do not believe that decisions made with respect to stock subject to the requirements of Code section 664(g) must be made by one trustee, or that the language found in Title I U.S.C. section 1 should not apply to stock transferred from Trust T to the Plan X CRT Suspense Account which has not been allocated to the accounts of affected Plan X participants.

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

(4) Co-trustees, each independent as defined in Code section 664(g)(3), may be appointed as trustees of Plan X and may exercise voting rights with respect to unallocated Company C stock received from Trust T.

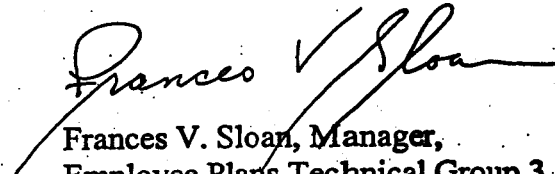
This ruling letter, by necessity, is based upon the assumption that Plan X meets the requirements of Code sections 401(a) and 4975(e)(7) at all times relevant thereto.

This ruling letter expresses no opinion as to whether the proposed amendment to Plan X referenced above satisfies the requirements of Code sections 401(a), 4975(e)(7) and 664(g).

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

If you have any questions concerning this letter ruling, please contact \_\_\_\_\_, Esquire (ID: - \_\_\_\_\_) who may be reached at \_\_\_\_\_ (not a toll-free number) or \_\_\_\_\_

Sincerely yours,

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

Enclosures:  
Deleted copy of this letter  
Notice of Intention to Disclose