

April 20, 2012

*Via electronic mail*

Diane Bloom  
Robert M. Walsh  
Employee Plans, Tax Exempt and Government Entities Division  
U.S. Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, D.C. 20044

Re: Internal Revenue Service Notice 2012-6.

Dear Ms. Bloom and Mr. Walsh:

The American Bankers Association<sup>1</sup> appreciates this opportunity to comment on Internal Revenue Service (Service) Notice 2012-6 (Notice), which extends and expands transition relief provided under Revenue Ruling 2011-1 (Revenue Ruling). The Revenue Ruling revised and restated the generally applicable rules for group trusts<sup>2</sup> described in Revenue Ruling 81-100. The relief provided in the Notice applies to certain group trusts, certain retirement trusts that qualify under the Puerto Rico Internal Revenue Code and participate in group trusts, and certain qualified retirement plans that benefit Puerto Rico residents (together, Puerto Rico Plans). The Notice also provides additional time for certain governmental retiree benefit plans (Governmental Plans) to be amended to satisfy the applicable requirements of the Revenue Ruling. Many ABA members maintain bank collective investment funds, which typically satisfy the requirements for a group trust, to invest the assets of qualified employee benefit plans and Governmental Plans, as well as provide trustee services to private group trusts.

ABA and its member institutions welcome the extended relief afforded in the Notice, as it provides some additional time to satisfy the recent new requirements. Nonetheless, there still

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<sup>1</sup> The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its 2 million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities. Learn more at [www.aba.com](http://www.aba.com).

<sup>2</sup> Group trusts are tax-exempt pooled investment vehicles comprising qualified retirement plans, governmental plans, and individual retirement accounts.

remain a number of open issues with respect to the scope and effect of the requirements in the Revenue Ruling to which we urge the Service to respond by either confirming or clarifying its position. These issues relate to (i) the separate account requirement under the Revenue Ruling; (ii) the requirements imposed on Governmental Plans under the Revenue Ruling, and (iii) the ultimate treatment of Puerto Rico Plans.

### **Separate Account Requirement**

The Revenue Ruling added the requirement that a group trust instrument expressly provide for “separate accounts (and appropriate records) to be maintained to reflect the interest which each adopting group trust retiree benefit plan has in the group trust,”<sup>3</sup> referred to herein as the “separate account requirement.” As we stated in our April 11, 2011, letter,<sup>4</sup> bank-sponsored group trusts typically use “unitized accounting,” in which participants’ interests are represented by “units” that are non-transferable, proportionate, and undivided. Although ABA and others have heard informally that the separate account requirement would be satisfied through the use of unitized accounting, the Service has not made this statement in the Notice or elsewhere in writing. Therefore, to avoid further confusion, we ask that the Service confirm in a release that the use of unitized accounting in practice – that is, without the need for a formalized provision reflected in the group trust agreement – satisfies the Revenue Ruling’s separate account requirement.

### **Governmental Retiree Benefit Plans**

The Notice provides more time for Governmental Plans to amend their governing documents to state that the plan’s assets are for the “exclusive benefit” of the plan participants and their beneficiaries (Exclusive Benefit Requirement) as required in the Revenue Ruling. The amount of additional time provided by the Notice depends upon the timing of the legislative session of the particular state body that has authority to amend the plan, i.e., the amendment must be made before the earlier of the close of the first regular legislative session of the applicable legislative body beginning after December 31, 2011, or January 1, 2015. ABA and our members appreciate the compliance extension, although we question the need for this requirement in light of the

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<sup>3</sup> Rev. Rul. 2011-1, page 11.

<sup>4</sup> ABA Letter to Internal Revenue Service (Apr. 11, 2011), available at [http://www.aba.com/NR/rdonlyres/DC65CE12-B1C7-11D4-AB4A-00508B95258D/71650/cl\\_IRS\\_Ltr2011Apr.pdf](http://www.aba.com/NR/rdonlyres/DC65CE12-B1C7-11D4-AB4A-00508B95258D/71650/cl_IRS_Ltr2011Apr.pdf).

Congressional intent behind Code Section 401(a)(24).<sup>5</sup> In the event the Service determines to proceed with its imposition of these new requirements, group trust sponsors would need to rely on the Governmental Plans to advise them of any change in their status as an eligible group trust participant in light of these new requirements. Group trust sponsors are not in a position to monitor an investing plan's continued compliance with the Exclusive Benefit Requirement once it has been originally determined to be an eligible investor in the group trust.

### **Puerto Rico Plans**

Large U.S. companies with operations in Puerto Rico often establish retirement benefit plans for their employees situated there. Many of these companies collectively invest all of their retirement benefit plans, both U.S. plans and Puerto Rico Plans, in bank-sponsored group trusts to facilitate investment diversification and efficient management of the assets. Furthermore, because of their relatively small asset size, Puerto Rico Plans usually can only take advantage of lower investment and administration fees, as well as access to certain investments, if they are invested alongside the larger plans of their US affiliates.

We appreciate that the Notice extended the prior transition relief set forth in Revenue Ruling 2011-1 and Revenue Ruling 2008-40. Plan sponsors now have until the end of 2012 to make certain transfers of assets related to Puerto Rico employees out of a U.S. based plan. In addition, we appreciate that the Notice permits a Section 1022(i)(1) Plan that receives a transfer of assets from a U.S. qualified plan to participate in an 81-100 group trust if the assets of the transferor plan were held in the 81-100 group trust on January 10, 2011. The Service also states that further guidance on whether Section 1022(i)(1) plans may invest in group trusts will eventually be released. As we stated in our 2011 letter, we urge the Service to state affirmatively that Section 1022(i)(1) plans may invest in group trusts, regardless of whether they had been invested

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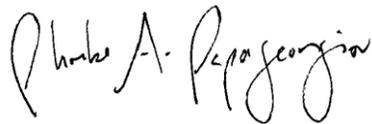
<sup>5</sup> As noted in the relevant Congressional conference report: “the tax-exempt status of a group trust will not be adversely affected merely because the trust accepts monies from (a) a retirement plan of a State or local government, *whether or not the plan is a qualified plan and whether or not the assets are held in trust*, or (b) any State or local government monies for use in satisfying an obligation of such State or local government to provide a retirement benefit under a governmental plan.” H.R. Conf. Rep. No. 760, 97th Cong., 2nd Sess. 81, 1982-2 C.B. 682 (emphasis added).

as of January 10, 2011. The policy reasons noted above, statutory language and legislative history, and indeed the Service's own record of determination letters<sup>6</sup> support this outcome.

### **Conclusion**

Thank you for this opportunity to comment on Notice 2012-6. ABA urges the Service to confirm or clarify the scope of the requirements in Revenue Ruling 2011-1 as we have recommended. If you have any questions about this letter or wish to discuss bank-sponsored group trusts, please call or write the undersigned at (202) 663-5053 or phoebep@aba.com.

Sincerely,

A handwritten signature in black ink that reads "Phoebe A. Papageorgiou". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

Phoebe A. Papageorgiou  
Senior Counsel

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<sup>6</sup> PLR 200336034.