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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Uniform Issue List: 408.09-00

Contact Person:

Telephone Number:

In Reference to: OP:E:EP:T4

Date:

Legend:

Company M =

Plan X =

Plan Y =

Plan Z =

This is in response to your letter dated September 30, 1998, as supplemented by your letter of June 28, 1999, submitted by your authorized representative, requesting a private letter ruling with respect to an individually designed Simplified Employee Pension ("SEP") adopted by Company M. You have requested a ruling that Plan Z satisfies the requirements of section 408(k) of the Internal Revenue Code.

Code section 408(k)(l) defines a SEP as an individual retirement account or individual retirement annuity ("IRA") with respect to which the requirements of paragraphs (2). (3), (4). and (5) of subsection 408(k) are met. A plan satisfying those requirements will be a qualified SEP.

Code section 408(k)(2) provides that during each calendar year the employer must make a contribution on behalf of each employee who (A) has attained age 21, (B) has performed services for the employer during at least 3 of the immediately preceding 5 calendar years, and (C) received at least $300 (as adjusted by section 408(k)(8)) in compensation (within the meaning of section 414(q)(7)) from the employer for the year. For this purpose, the employer may exclude from consideration employees described in subparagraphs (A) (concerning certain employees covered by a collective bargaining agreement) and (C) (concerning nonresident aliens) of section 410(b)(3).

Code section 408(k)(3)(A) provides that the employer contributions made to a SEP may not discriminate in favor of any highly compensated employee (within the meaning of section 414(q)). Under section 408(k)(3)(C), contributions will not be considered discriminatory if they bear a uniform relationship to the total compensation (not in excess of the first $150,000) of each employee maintained in the SEP.

Code section 408(k)(4)(A) provides that a SEP may not condition employer contributions on the retention in Plan Z of any portion of the amount contributed. Section 408(k)(4)(8) also provides that the employer may not prohibit withdrawals from the SEP.

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Code section 408(k)(5) provides that employer contributions to a SEP must be determined under a written allocation formula which specifies (A) the requirements which an employee must satisfy to share in an allocation and (B) the manner in which the amount allocated is computed.

Revenue Procedure 87-50, 1987-2 C.B. 647, provides that the SEP agreement must be used with an Internal Revenue Service (IRS) model IRA or an IRS approved master or prototype IRA.

Code section 415(e) provides certain limitations on contributions and benefits for a year when an employee participates or has participated in both a defined benefit plan and a defined contribution plan maintained by the same employer. In this case, the information you have furnished on accrued benefits from the terminated defined benefit plan indicates that, even with the additional contributions to the SEP, the section 415 limitations will not be violated.

Based on the above, we conclude that Plan Z satisfies the requirements of Code section 408(k) and qualifies as a SEP. Employer contributions to a qualified SEP generally are deductible subject to the provisions of section 404(h).

This ruling is based on the provisions of Plan Z as contained in the documents and information submitted to our office with your request dated September 30, 1998, as supplemented by your submission of June 28, 1999.

This ruling has no bearing on the continued qualification of Plan Z as a SEP in the event of any amendments to Plan Z, changes in the applicable statutes and regulations, the adoption of any other qualified plan by Company M, or the failure of Plan Z to comply with the terms of its plan documents during its operation.

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

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

Sincerely yours, John G. Riddle, Jr., Chief, Employee Plans, Technical Branch 4

John G. Riddle Jr.

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