Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Uniform Issue List: 401.0000

Contact Person:

Telephone Number:

In Reference to:
OP:E:EP:T:3

Date:
NOV 8 1999

Att'n:

Legend:

Corporation A =

Subsidiary B =

Buyer C =

Corporation D =

Plan X =

Dear

This is in response to your request for a ruling, dated February 19, 1999, and supplemented by letters dated July 7, 1999, and September 14, 1999, submitted by your authorized representative concerning distributions from a plan described in section 401(k) of the Internal Revenue Code ("Code"). Your authorized representative submitted the following facts and representations in support of the requested ruling.

Plan X, is a defined contribution pension plan qualified under Code sections 401(a) and 401(k). Plan X includes a cash or deferred arrangement ("CODA") as described in Code section 401(k), with employer matching contributions and employer profit-sharing contributions. Plan X is a multiple employer plan within the meaning of Code section 413(c). Corporation D sponsors Plan X, and Plan X has been adopted by several employers, including Corporation A.

As a participating employer in Plan X, Corporation A is an entity not treated as a single employer with Corporation D under Code sections 414(b) or 414(c), but has certain business relationships with Corporation D. Subsidiary B, a wholly owned subsidiary of Corporation A, was a participating employer in Plan X until December 31, 1998. On December 31, 1998, Corporation A sold all of its issued and outstanding stock of Subsidiary B to Buyer C. As a result of the sale, Subsidiary B became a direct, wholly owned subsidiary of Buyer C, an unrelated corporation.

Effective December 31, 1998, in connection with the above described sale by Corporation A of Subsidiary B to Buyer C, the status of Subsidiary B as a participating employer in Plan X was terminated by action of the Board of Directors of Subsidiary B. However, Corporation A has continued to be a participating employer in Plan X following the sale of Subsidiary B to Buyer C. In its continuing capacity as a participating employer in Plan X, Corporation A adopts amendments to Plan X, is a party to trust agreements entered into under Plan X, and maintains accounts on behalf of employees who have deferred vested accounts under Plan X. Such accounts include employees of Subsidiary B whose accounts are affected by the disposition of Subsidiary B, until such employees are determined eligible and elect to receive distributions of their accounts.

Plan X provides, generally, for the distribution of a participants vested account balance under the Plan upon the disposition by Corporation A of a subsidiary, to an unrelated corporation which does not maintain the Plan, but only with respect to a participant who continues employment with the corporation acquiring such subsidiary. Plan X also provides that such distributions shall be made in the form of a lump sum to the affected participants no later than the end of the second calendar year after the calendar year in which the sale occurred. In accordance with this provision, Corporation A intends to make distributions to former employees of Subsidiary B who continue employment with Buyer C.

Buyer C has not adopted or assumed Plan X, nor will it accept a transfer of assets or liabilities from Plan X, of the account balance of the employees of Subsidiary B. Pursuant to an agreement, Buyer C's employee benefit plan will accept direct rollovers of eligible rollover distributions of Subsidiary B's employees' account balances.

Based on the foregoing facts and representations, you have requested the following rulings:

(1) That the disposition of Subsidiary B by Corporation A constituted the disposition of a subsidiary within the meaning of Code section 401(k)(10)(A)(iii), with respect to employees who continued employment with Subsidiary B.

(2) That the continued participation in and maintenance of Plan X by Corporation A satisfies the requirements of Code section 401 (k)(10)(C) and section 1.401 (k)-1 (d)(4)(i) of the Income Tax Regulations.

(3) That distributions from Plan X of the entire balances to the credit of Subsidiary B employees who have continued employment with Subsidiary B following its disposition by Corporation A may be made without adversely affecting the tax treatment of salary deferrals under Plan X under Code section 402(e)(3), provided that each distribution is a lump sum distribution, within the meaning of Code section 401 (k)(l O)(B), that is made not later than the end of the second calendar year after the calendar year of such business disposition.

Section 401(k)(2)(B)(i)(II) of the Code when read together with section 401(k)(10)(A)(iii) and section 1.401 (k)-1 (d)(l)(v) of the Income Tax Regulations provides, in relevant part, that amounts attributable to elective deferrals may not be distributed from a cash or deferred arrangement before the date of the sale or other disposition by a corporation of such corporation's interest in a subsidiary (within the meaning of Code

section 409(d)(3)), but only with respect to an employee who continues employment with such subsidiary.

Section 401 (k)(10)(C) of the Code provides generally that the disposition will not meet the requirements of Code section 401 (k)(l O)(A)(iii) unless the transferor corporation maintains the plan.

Section 1.401(k)-l(d)(4) of the Income Tax Regulations provides rules applicable to distributions upon the sale of assets. Section 1.401 (k)-1 (d)(4) of the regulations provides, in relevant part, that (i) the seller must maintain the plan, and the purchaser may not maintain the plan after the disposition; (ii) the employee receiving the distribution must continue employment with the purchaser of the assets; (iii) the distribution must be in connection with the disposition of the subsidiary to an unrelated entity, (one that is not required to be aggregated with the seller under Code sections 414(b), (c), (m), or (o) after the sale or other disposition). Section 1.401 (k)-1 (d)(5) of the regulations provides, in part, that a distribution may be made only if it is a lump sum distribution within the meaning of section 402(d)(4) of the Code.

You have represented that Subsidiary B has been operated as a wholly owned subsidiary of Corporation A. In this case, Corporation A sold to Buyer C all the issued and outstanding stock of Subsidiary B. You have represented that Buyer C is a corporation unrelated to Corporation A. You have represented that in accordance with the terms of Plan X, the above described Plan X distributions are being distributed as a lump sum distribution to former employees who continue employment with Buyer C in accordance with the terms of Plan X.

Accordingly, with respect to the first ruling, we conclude that the stock acquisition of Subsidiary B, a wholly-owned subsidiary of Corporation A, resulted in a disposition of a subsidiary within the meaning of section 401 (k)(l O)(A)(iii) of the Code, with respect to employees who continue employment with Subsidiary B.

You have represented that Corporation A has continued to be a participating employer in Plan X, and will maintain accounts on behalf of employees of Subsidiary B who have deferred vested accounts under Plan X. Buyer C will not maintain Plan X.

Accordingly, with respect to the second ruling, we have determined that in the described transaction, Corporation A maintains Plan X as that ten is used in Code section 401 (k)(l O)(C) and section 1.401 (k)-1 (d)(4)(1) of the regulation.

Based on our determination in ruling requests one and two, we conclude that distributions from Plan X of the entire balances to the credit of Subsidiary B employees who have continued employment with Subsidiary B following its disposition by Corporation A may be made without adversely affecting the tax treatment of salary deferrals under Plan X under Code section 402(e)(3), provided that each distribution is a lump sum distribution, within the meaning of Code section 401(k)(10)(B), that is made not later than the end of the second calendar year of such business disposition.

This ruling is based on the assumption that Plan X continues to be qualified under section 401 (a) of the Code at all relevant times. This ruling is also based on the assumption that any consent or election required under Code sections 411 (a)(1 1) or 417 is obtained.

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.

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

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Chief, Employee Plans
Technical Branch 3

Enclosures:
Deleted copy of letter
Notice of Intention to Disclose
Copy of Letter to Authorized Representative