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Internal Revenue Service

Uniform Issue List: 40 1 .0000

Department of the Treasury

Washington, DC 20224

Person To Contact:

Telephone Number:

Refer Reply To: T:EP:RA:T3

Date: MAR - 2 2001

Legend:

Corporation A =

Entity B =

Company C =

Entity D =

Entity E =

Entity F =

Entity G =

Corporation H =

Corporation I =

Plan X =

Dear

This is in response to your request for a ruling, dated August 31, 1999, supplemented by letters dated October 29, 1999, April 21, 2000, and October 10, 2000, and facsimile dated February 21, 2001, submitted by your authorized representative concerning distributions from a plan described

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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.

Corporation A maintains Plan X, a profit-sharing plan which includes a cash or deferred arrangement ("CODA") as described in section 401(k) of the Code. Plan X is a prototype document to which the Internal Revenue Service ("Service") has issued a favorable opinion letter. Corporation A has received a favorable determination letter from the Service with respect to its adoption of such prototype plan.

Prior to the transactions described herein, Corporation A owned eighty-eight percent of the outstanding equity interests in Entity B, which in turn owned one hundred percent of the outstanding equity interests in Entity E. Corporation A also owned one hundred percent of Corporation H, which owned one hundred percent of Entity F, which in turn owned one hundred percent of the outstanding equity interests in two subsidiaries. Entity B, Entity E, and Entity F are adopting employers of Plan X.

In a complex and interrelated series of transactions between Corporation A and Corporation H and their related entities, three types of transactions occurred that affected the employees who participated in Plan X. First, substantially all of the assets and liabilities of Entity B were transferred to Company C. Company C is a limited liability company that is a disregarded entity for tax purposes. One hundred percent of the ownership interest of Company C is held by Entity D, which is taxed as a partnership.

Second, Entity E was merged into Company C. Third, Corporation H contributed all of its equity interest in Entity F to Entity B. Entity B then merged Entity F into its wholly-owned subsidiary Entity G, a newly-formed limited liability company, and then Entity B contributed the stock of Entity G to Company C so that Entity G became a wholly-owned subsidiary of Company C. Corporation A continues to have a substantial indirect ownership interest in Entity D. It retains the right to elect two of the minirnum of seven board members of Entity D and its subsidiaries including Company C and to submit its preferences on major corporate issues. As a result of the foregoing transactions, the employees of Company C and its subsidiaries no longer participate in Plan X.

Plan X will make lump sum distributions as soon as possible to employees who have been hired by Company C ("affected employees"). Plan X will make no distributions to the employees who have continued employment with Corporation A. Corporation A will continue to maintain Plan X for the benefit of its employees.

Plan X provides, generally, for the distribution of a participant's vested account balance under the Plan in the type of transactions described above, but only with respect to a participant who continues employment with the acquiring corporation. 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.

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

(1) That the transfer of assets and liabilities of Entity B to Company C by Corporation A constitutes a disposition by a corporation of substantially all of the assets used by Corporation A in a trade or business of such corporation within the meaning of section 401 (k)(1 0)(A)(ii) of the Code.

(2) That the merger of Entity E into Company C and the transfer of Entity G to Company C as a subsidiary is a disposition by Entity B of its interest in subsidiaries within the meaning of sections 409(d)(3) and 401(k)(10)(A)(iii) of the Code.

(3) That the distribution, as soon as administratively possible after this ruling is granted and within one tax year, to each affected employee of the entire balance in his or her account in Plan X, on account of the above-described transactions will constitute an "eligible rollover distribution" within the meaning of section 402(c)(4) of the Code.

(4) That each affected employee who rolls over his or her distribution from Plan X in accordance with section 402(c)(3) of the Code, or who elects to have his or her distribution paid directly to another eligible retirement plan in accordance with section 402(e)(6) of the Code, will not be required to include the proceeds representing his or her interests in Plan X in his or her income in the year of distribution.

Section 401 (k)(2)(B)(i) of the Code provides, in relevant part, that distributions from a qualified cash or deferred arrangement may not be made earlier than the occurrence of certain stated events. Section 401(k)(10)(A) provides that two of these stated events are (ii) the disposition by a corporation of substantially all its assets (within the meaning of section 409(d)(2)) used by such corporation in a trade or business of such corporation to an unrelated corporation, but only with respect to an employee who continues employment with the corporation acquiring such assets and (iii) the disposition by a corporation of such corporation's interest in a subsidiary (within the meaning of section 409(d)(3)), but only with respect to an employee who continues employment with such subsidiary.

In regard to ruling request one, Corporation A disposed of the Entity B assets by transfening them to Company C, a limited liability company which is a disregarded entity for tax purposes, being owned by Entity D which is taxed as a partnership. Since the disposition was not to a corporation, we conclude that the above-described disposition of assets was not a disposition within the meaning of section 401(k)(10)(A)(ii) of the Code.

In regard to ruling request two, Corporation A has retained a substantial indirect ownership interest in Entity D and a continuing role in its governance subsequent to Corporation A's disposition of Company C. Accordingly, we conclude that the above-described merger of Entity E and transfer of Entity G into Company C are not dispositions within the meaning of section 401(k)(1 O)(A)(iii).

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Because of our conclusions in the first and second ruling requests, the issues presented in the third and fourth ruling requests are moot.

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. 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.

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, Manager
Employee Plans Technical Group 3
Tax Exempt and Government Entities Division

Enclosures:
Deleted copy of letter
Notice of Intention to Disclose

cc:

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