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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

MAR 04 2005

Uniform Issue List: 4980-00.00

Attention:

Legend:

Company A =

Company B =

Company C =

Company D =

Plan X =

Plan Y =

Dear

This is in response to your request for a ruling dated October 23, 2003, submitted by your authorized representative regarding a waiver of the excise tax under section 4980F(c)(4) of the Internal Revenue Code (the "Code") as it applies to Plan X.. A letter dated January 7, 2005, supplemented the request.

The following facts and representations have been submitted by your authorized representative:

Company A was previously known, prior to May 14, 2001 as Company B. Company A established Plan X on April 12, 2001 effective as of January 1, 2001. Plan X was then known as Plan Y. Plan Y was to be an employee stock ownership plan ("ESOP") with a

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money purchase feature. Company A retained Company C to draft the Plan X documents, and to be the outside administrator of Plan X.

Plan Y acquired [REDACTED] shares of common stock of Company A for [REDACTED] on [REDACTED] pursuant to a Stock Purchase Agreement. This acquisition was financed pursuant to a [REDACTED] Company A and Plan Y (the "ESOP Loan"), and Company A was required to make sufficient annual contributions to enable Plan Y to repay the Plan Y Loan.

As originally adopted, Plan Y contained provisions that required annual employer contributions to the money purchase plan feature of Plan Y equal to [REDACTED] of the covered compensation of all participants, and also contained provisions that allowed discretionary employer contributions under the stock bonus plan feature of Plan Y. All covered employees accrued benefits with respect to employer contributions as of the last day of the calendar year, and employer contributions for a calendar year were required to be paid to Plan Y's trust no later than the due date for filing Company A's federal income tax return for the calendar year.

On October 15, 2001, Company A adopted Amendment Number 2 to Plan Y, which deleted the Plan Y money purchase plan feature (the "Money Purchase Amendment"). The Money Purchase Amendment 2 amended and restated Plan Y retroactively effective as of January 1, 2001, as an employee stock ownership plan, as defined in Code section 4975(e)(7), and as a stock bonus plan under Code section 401(a), but not as a money purchase plan as originally adopted. Pursuant to section 2 of Amendment Number 2, Plan Y was retitled Plan X, which reflected the deletion of the plan's money purchase feature.

The Money Purchase Amendment 2 was adopted in response to correspondence from Company C dated October 8, 2001. This correspondence noted that the purpose of the Money Purchase Amendment was to remove the money purchase plan feature of Plan Y and address recent guidance from the Internal Revenue Service. Company C's correspondence also included an announcement to employees. Company C's correspondence said that this enclosed announcement "should be distributed on or before October 31, 2001", but it did not refer to any affirmative requirement to provide participants with any advance notice of the Money Purchase Amendment.

Company A has no record of delivering the notice described above. However, Company A fully apprised participants of the resulting terms of the ESOP by distributing summary plan descriptions ("SPDs") dated September 25, 2001 that correctly summarized the terms of Plan Y, as modified by the pending Money Purchase Amendment 2 (making no reference to the plan's money purchase feature). This was the first time that Plan Y's terms (less its money purchase feature) were communicated to participants who had no prior notice of the initial money purchase plan feature of Plan Y. The SPD referred to a plan titled Plan X and did not refer to Plan Y. The SPD gave the effective date of Plan X as January 1, 2001..

On January 9, 2002, the Internal Revenue Service issued a favorable determination letter on the qualified status of Plan X. By reference to an amendment executed on October 15, 2001, this determination letter also approved the Money Purchase Amendment 2.

In the course of its pre-closing due diligence, Company D inquired, on July 25, 2003, as to whether Company A had provided a notice under section 4980F(e) of the Code with respect

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to the Money Purchase Amendment 2. After some investigation Company A was not able to confirm that Company C's separate notice was delivered to the participants in 2001. However, in light of the oversight, Company A immediately distributed the notice to all participants on August 8, 2003, which was less than 30 days after Company A became aware of the possible error.

Based on the foregoing facts, you request a ruling that the tax imposed under section 4980F(a) of the Code is waived under section 4980F(c)(4).

Section 204(h)(1) of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. section 1054(h)(1), provides, in relevant part, that a plan described in paragraph (2), to include an individual account plan subject to the funding standards of 29 U.S.C. section 1082, may not be amended so as to provide a significant reduction in the rate of future benefit accruals unless, after the adoption of the plan amendment and not less than 15 days before the effective date of the plan amendment, the plan administrator provides a written notice setting forth the plan amendment and its effective date (A) to each participant in the plan, (B) each beneficiary who is an alternate payee, and (C) each organization representing participants in the plan.

Code section 4980F(a) imposes a tax on the failure of any applicable pension plan to meet the requirements of Section 4980F(e) with respect to any applicable individual.

Section 4980F(c)(1) of the Code provides that no tax shall be imposed by section 4980F(a) on any failure during any period for which it is established to the satisfaction of the Secretary that any person subject to liability for such tax did not know that the failure existed and exercised reasonable diligence to meet the requirements of section 4980F(e).

Section 4980F(c)(2) of the Code provides that no tax shall be imposed by section 4980F(a) on any failure if (A) any person subject to liability for the tax exercises reasonable diligence to meet the requirements of section 4980F(e), and (B) such person provides the notice described in Section 4980F(e) during the 30-day period beginning on the first day such person knew, or exercising reasonable diligence would have known, that such failure existed.

Section 4980F(c)(4) of the Code provides that in the case of a failure that is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by section 4980F(a) to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

Section 4980F(e)(3) of the Code provides that the notice required in section 4980F(e)(1) shall be provided within a reasonable time before the effective date of the plan amendment.

Section 4980F(e)(1) provides that if an "applicable pension plan" is amended to provide for a significant reduction in the rate of future accrual, the plan administrator shall provide the notice described in paragraph (2) to each applicable individual.

Section 4980F(f)(2) of the Code defines "applicable pension plan", in part, to include an individual account plan that is subject to the funding standards of section 412.

Section 4980F of the Code was added by the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). Section 659(a)(1) of EGTRRA provides that section 4980F of the Code applies to plan amendments taking effect on or after June 7, 2001.

In this case, on October 15, 2001, Company A adopted the Money Purchase Amendment 2 which deleted the Plan Y money purchase plan feature. The Money Purchase Amendment 2 amended and restated Plan Y retroactively effective as of January 1, 2001, as an employee stock ownership plan, as defined in Section 4975(e)(7), and as a stock bonus plan under Section 401(a), but not as a money purchase plan as originally adopted. As restated and amended, Plan Y was styled Plan X.

The facts of this case indicate that Amendment Number 2 had an effective date prior to June 7, 2001. Accordingly, in response to your ruling request, the notice requirement imposed by Code section 4980F(e) does not apply to this case, and the excise tax imposed by Code section 4980F(a) for failure to give such notice is not applicable in this case.

No opinion is expressed as to the federal tax consequences of the transaction described above under any other provisions of the Code. Furthermore, no opinion is expressed as to whether the transaction described herein resulted in a failure to comply with any other provision of the Internal Revenue Code or of Title I of ERISA.

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

A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office. If you have any questions concerning this private letter ruling, please contact ***** (ID: **-****) at (***) ***-**** (not a toll-free number).

Sincerely Yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

CC: