Internal Revenue Service

Uniform Issue List: 401.00-00

Department of the Treasury

Washington, DC 20224

200019045

Contact Person:

Telephone Number:

In Reference to:

Date:

T:EP:RA:T3

FEB 14 2000

Att'n:

Legend:

Company A =

Company B =

Company C =

Group D employees =

Division E =

Plan X =

Dear

This is in response to your request for a private letter ruling, dated February 19, 1999, as supplemented by additional correspondence dated July 7, 1999, and December 7,1999, which was submitted by your authorized representative. The request concerns the federal income tax consequences of certain transactions under section 401(k) of the Internal Revenue Code ("Code"). Your authorized representative submitted the following facts and representations in support of the requested rulings.

Plan X is a defined contribution plan qualified under sections 401(a) and 401(k) of the Code. Plan X provides for salary deferral contributions under section 401(k), employer matching contributions and employer profit-sharing contributions. Plan X is a multiple employer plan within the meaning of section 413(c) of the Code. Company A sponsors Plan X.

In 1985, Company A entered into a joint arrangement with Company C which allowed the two companies to at less cost than if the companies performed these functions on an individual basis. In connection with its joint arrangement with Company C, Company A employed the Group D employees to handle legal claims and to provide legal advice. The Group D employees were part of a larger, centralized operation known as Division E, which provides legal services to of Company A and certain other companies, including Company C prior to the termination of its joint arrangement with Company A.

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In 1998, Company A and Company C terminated their joint arrangement and Company C entered into a similar joint arrangement with Company B. Because of the termination of the joint arrangement with Company C, Company A discharged all the Group D employees effective December 31, 1998. Effective January 1, 1999, the Group D employees were hired by Company B to provide legal services in connection with Company B's joint arrangement with Company C. This work is unrelated to the ongoing business of Company A. Company A and Company B have always been and do remain separate and distinct. They are unrelated within the meaning of sections 414(b), (c), and (m) of the Code. There was no liquidation, merger, consolidation, or transfer of corporate assets of Group D's former employer, in connection with Group D's termination of employment by Company A, and re-employment by Company B.

During their employment with Company A, the Group D employees participated in Plan X. Section 8.02 of Plan X provides that a participant may receive a distribution of the vested interest in his or her account from the plan upon termination of employment. Termination of employment is defined in section 1.45 of Plan X to mean the date on which an employee's employment ends as a result of the resignation, retirement, discharge or death of the employee.

Based on the foregoing facts and representations, you have requested a ruling that a Plan X distribution to the Group D employees, by reason of Company A's discharge of such employees, will be considered to be made on account of the employees' separation from service within the meaning of section 401(k)(2)(B)(i)(I) of the Code, and section 1.401(k)-1(d)(1)(I)(i) of the Income Tax Regulations.

Section 401(k)(2)(B)(i) of the Code provides, in relevant part, that distributions from a cash or deferred arrangement may not be made earlier than the occurrence of certain stated events. Section 401(k)(2)(B)(i)(I), and section 1.401(k)-1(d)(1)(i) of the Income Tax Regulations further provide that one of these distributable events is "separation from service."

Revenue Ruling 79-336, 1979-2 C.B. 181, provides that an employee will be considered separated from service within the meaning of section 402(d)(4)(A)(iii) of the Code (formerly section 402(e)(4)(A) of the Code) only upon the employee's death, retirement, resignation, or discharge, and not when the employee continues on the same job for a different employer as a result of the liquidation, merger, or consolidation, etc., of the former employer. Revenue Ruling 80-129, 1980-1 C.B. 86, extended this rationale to situations where an employee of a partnership or corporation, the business of which is terminated, continues on the same job for a successor employer.

The issue is whether the affected employees incurred a separation from service on account of their discharge by Company A. These discharged employees are engaged in work unrelated to the ongoing business of Company A. Company A and Company B have always been and do remain separate and distinct. They are unrelated within the meaning of sections 414(b), (c), and (m) of the Code. There is no liquidation, merger, consolidation or reorganization, transfer of corporate assets, or any other similar corporate transaction associated with the discharge of these employees.

Accordingly, we conclude that distributions from Plan X to the affected employees will be considered as made upon a separation from service within the meaning of section 401(k)(2)(B)(i)(I) of the Code and corresponding regulations.

The above ruling is based on the assumption that Plan X is qualified under section 401(a) of the Code and the related trust will be tax exempt under section 501(a) of the Code at all relevant times.

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