Internal Revenue Service

Department of the Treasury

Washington, DC 20224

200051051

Uniform Issue List No. 401.00-00

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Contact Person:

Telephone Number:

Id. No.
T:EP:RA:T4

In Reference to:
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Date:

SEP 27 2000

LEGEND:

Company A =

Company B =

Division C =

Division D =

Plan X =

Agreement Y =

Dear

This is in response to a ruling request submitted on your behalf by your authorized representative in a letter dated and supplemented by additional correspondence dated , concerning distributions from a plan described in section 401(k) of the Internal Revenue Code (the "Code").

In support of your ruling request your authorized representative has presented the following facts:

Company A was incorporated in and maintains Plan X, a profit sharing plan which incorporates a cash or deferred arrangement as described in section 401(k) of the Code. Company A operates retail stores which sell cameras and other photographic equipment and service to the general public (Division C). In ..., Company A opened Division D, which specializes in sales, rentals and repairs of audio/visual equipment to educational institutions and businesses.

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Division C and Division D are conducted as separate and distinct operating units. Divisions C and D maintain separate sales staff, separate accounting functions including the reporting of sales, expenses, profits and losses, and separate management. The Divisions have different logos on sales brochures and stationery. Advertising and personnel matters are handled separately within each division

Pursuant to Agreement Y dated , Company A sold Division C to Company B, an unrelated corporation. The sale constituted all the assets of Division C. Company B maintains its own 401(k) plan. After the sale, Company A will conduct business only through Division D.

Your authorized representative further represents that distributions from the plan will take place before the end of the second calendar year after the disposition of assets and will be in the form of a lump sum distribution. Any consents required under sections 411(a)(11) and 417 of the Code will be obtained.

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

That the sale of Division C to Company B, resulted in a disposition by Company A of substantially all the assets used by it in a trade or business within the meaning of Section 401(k)(10)(A)(ii) of the Code, so that distributions from Plan X to former employees of Division C who continue employment with Company B will be permitted distributions under section 401(k)(2)(B)(i)(II) of the Code.

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)(2)(B)(i)(II) of the Code, when read together with section 401(k)(10)(A)(ii), further provides that one of these distributable events is the disposition by a corporation of substantially all its assets (within the meaning of section 409(d)(2)) used by the corporation in a trade or business of such corporation, but only with respect to an employee who continues employment with the corporation acquiring such assets. Section 401(k)(10)(B) provides that such distributions must be lump sum distributions, within the meaning of section 402(d)(4), with certain modifications (and for years beginning after 12/31/99, within the meaning of section 402(e)(4)(D), with certain modifications).

Section 1.401(k)-1(d)(4) of the Income Tax Regulations provides that a cash or deferred arrangement satisfies section 1.401(k)-1(d)(1) only if amounts attributable to elective contributions may not be distributed before the occurrence of one

of the events stated in (d)(1)(i) through (d)(1)(iv), and the distributions so permitted also satisfy paragraphs (d)(2) through (d)(6) (to the extent applicable).

The event described in section 1.401(k)-1(d)(1)(iv) of the regulations is the date of the sale or other disposition by a corporation of substantially all the 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.

Section 1.401(k)-1(d)(4) of the Regulations provides rules applicable to distributions upon the sale of assets. Section 1.401(k)-1(d)(4) 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 assets; and (iv) the sale of substantially all the asset used in a trade or business means the sale of at least 85 percent of the assets, and an unrelated entity is one that is not required to be aggregated with the seller under sections 414(b), (c), (m), or (o) of the Code 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, with modifications as specified in that regulation (now section 402(e)(4)(D)).

Section 1.401(k)-1(d)(6)(v) of the Regulations provides that a distribution may be made under section 1.401(k)-1(d) only if any consent or election required under section 411(a)(11) or 417 is obtained.

In this case, Company A sold to Company B, an unrelated corporation, all the assets of Division C which, based on all the facts presented, has been determined to be a trade or business as that term is used in section 401(k)(10)(A)(ii) of the Code. Company A continues to maintain Plan X and Company B does not maintain Plan X, after such sale. Distributions will be made in the form of lump sum distributions as described in section 401(k)(10)(B) of the Code.

Accordingly, we rule that the sale of Division C to Company B, resulted in a disposition by Company A of substantially all the assets used by it in a trade or business within the meaning of Section 401(k)(10)(A)(ii) of the Code, so that lump sum distributions from the Plan to former employees of Division C who continue employment with Company B will be permitted distributions under section 401(k)(2)(B)(i)(II) of the Code.

The above ruling is based on the assumption that Plan X is qualified under section 401(a) at the time of the transaction.

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

In accordance with a power of attorney on file in this office, a copy of this ruling is being sent to your authorized representative.

Sincerely yours,

John G. Riddle, Jr.

John G. Riddle, Jr.
Manager, Employee Plans
Technical Group 4
Tax Exempt and Government
Entities Division

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

cc: