Internal Revenue Service

Department of the Treasury

Washington, DC 20224

199908053

Contact Person:

Telephone Number:

In Reference to:

Date:

DEC 1 1998

S.I.N.: 404.16-00

Legend:

Company A =
Plan X =
Stock Exchange Y =

Dear :

This is in reply to your ruling request of April 20, 1998, as supplemented by letters dated July 6, 1998, and October 30, 1998, submitted on your behalf by your authorized representative, regarding the federal income tax consequences of proposed amendments to Plan X. The following facts and representations have been submitted by your authorized representative.

Company A established Plan X, a defined contribution plan, as of January 25, 1983. Under Plan X, employees of Company X and its subsidiaries can make pre-tax elective contributions pursuant to section 401(k) of the Internal Revenue Code and receive employer matching contributions on the pre-tax elective contributions. Plan X is qualified under section 401(a) and 401(k) of the Code and its trust is exempt under section 501(a). Plan X is administered by an administrative committee appointed by the Chairman of Company A.

All funds contributed to Plan X are placed in a trust for the benefit of participants and their beneficiaries and are held by a trustee. Plan assets are invested in one or more investment funds established by the trustee, at the direction of the administrative committee. The investment funds may include (i) a Company Stock Fund, (ii) a pooled fund established for the investment of the assets of tax-qualified pension and/or profit-sharing plans, (iii) a mutual fund, (iv) a contract issued by an insurance company, and (v) any other investment vehicle suitable for the investment of trust funds. All dividends, interest, and other distributions received by the trustee in respect of any of the investment funds, including the Company Stock Fund, are reinvested in the same fund. Company A's stock is traded on Stock Exchange Y, a national securities exchange, registered under Section 6 of the Securities Exchange Act of 1934.

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Company A is proposing certain amendments to Plan X, which would accomplish the following:

(i) A portion of Plan X will be designated as forming a stock bonus plan as described in section 1.401-1(b)(1)(iii) of the Income Tax Regulations and a non-leveraged employee stock ownership plan ("ESOP") as described in section 4975(e)(7) of the Code. The ESOP portion so created will consist of all ESOP Accounts maintained by Plan X. The ESOP Accounts maintained for each participant will consist of the portion of each participant's account that is invested in the Company Stock Fund. The ESOP Accounts will be primarily invested at all times in Company A stock.

(ii) Any cash dividend paid with respect to shares of Company A stock held in the ESOP Accounts will be paid in cash to participants automatically. Company A intends that the elective deferrals of participants who receive payment of cash dividends will be increased automatically by an amount equal to the amount of dividends received. Dividends will be distributed only to participants who are able, within the limitations of sections 402(g) and 415 of the Code, to increase their elective deferrals for such year by the amount of dividends paid.

(iii) any dividend payments to participants will be paid, in the sole discretion of the Committee, by Company A's dividend disbursing agent: (1) to the trustee, and then distributed by the trustee to participants no later than 90 days after the end of the plan year in which paid to the trustee or (2) to the trustee, who may then appoint Company A's (or a participating subsidiary's) payroll department as disbursing agent for the trustee for distribution to participants.

If a participant elected not to increase his or her before-tax contributions to Plan X by the amount of dividends, then the payroll department would increase the amount of the next payroll check to each participant receiving a distribution of dividends by the amount of the dividends payable to the participant. But if a participant is deemed to have elected to increase his or her compensation deferral election to provide for an additional deferral of compensation up to the amount of the ESOP dividend (subject to limitations under section 402(g) and 415 of the Code), such amount would be deducted from the participant's compensation for the next payroll and added to the amount normally contributed to Plan X for that period. All dividends paid during a year would be reported to each participant at the end of the year on Form 1099-DIV.

Unless a participant who receives a dividend distribution elects otherwise, he or she will be deemed to have increased his or her compensation deferral election for the pay

period in which such dividends are distributed and the amount of such participant's elective deferral will be automatically increased by the amount of the dividend. If the participant elects not to so increase his or her compensation deferral election, which notice is given through the means provided for this particular purpose by Company A, his or her payroll check/deposit will be increased by the amount of the cash dividend. Company A will not make matching contributions on additional elective deferrals made pursuant to this procedure.

Based on the foregoing, you request a ruling that dividends paid or distributed on Company A stock held by the ESOP maintained by Company A (and participating subsidiaries) will be deductible under section 404(k) of the Code if such dividends are paid, in the sole discretion of the Committee, (i) by Company A's dividend disbursing agent directly to the trustee and distributed by the trustee to participants no later than 90 days after the end of the plan year in which paid to the trustee or (ii) by Company A's dividend disbursing agent to the trustee, who may then appoint Company A's (or a participating subsidiary's) payroll department as disbursing agent for the trustee for distribution to participants.

By the letter dated October 30, 1998, you withdrew the ruling request with respect to the application of section 3402 of the Code to certain employee deferrals.

With respect to the ruling request, section 404(k)(1) of the Code provides that, in the case of a corporation, there shall be allowed as a deduction for a taxable year the amount of any applicable dividend paid in cash by such corporation during the taxable year with respect to applicable employer securities. Such deduction is in addition to the deductions allowed under section 404(a).

Section 404(k)(2) of the Code provides, in relevant part, that the term "applicable dividend" means any dividend which, in accordance with the plan provisions, is paid to the plan and is distributed in cash to the participants in the plan, or their beneficiaries, not later than 90 days after the close of the plan year in which paid.

Section 404(k)(3) of the Code provides that for purposes of this subsection, "applicable employer securities" means, with respect to any dividend, an employee stock ownership plan which is maintained by--(A) the corporation paying such dividend, or (B) any other corporation which is a member of a controlled group of corporations (within the meaning of section 409(e)(4) which includes such corporation).

Section 404(k)(6)(A) of the Code provides that for purposes of section 404(k), "employer securities" has the meaning given such term by section 409(l) of the Code.

Section 409(1) of the Code provides that the term "employer securities" means common stock issued by the employer (or by a corporation that is a member of the same controlled group) which is readily tradable on an established securities market.

Section 404(k)(5)(A) of the Code provides that the Secretary may disallow the deduction under paragraph (1) for any dividend if the Secretary determined that such dividend constitutes, in substance, an evasion of taxation.

Based upon your representations, the subject dividends on Company A stock allocated to the plan participants' ESOP accounts will be paid to the plan participants within 90 days of the close of the plan year, if they not elect to have the dividends retained by Plan X.

Accordingly, we conclude, with respect to your ruling request, that dividends paid or distributed on Company A stock held by an ESOP maintained by Company A (and participating subsidiaries) will be deductible under section 404(k) of the Code if such dividends are paid, in the sole discretion of the Committee, (i) by Company A's dividend disbursing agent directly to the trustee and distributed by the trustee to participants no later than 90 days after the end of the plan year in which paid to the trustee, or (ii) by Company A's dividend disbursing agent to the trustee, who may then appoint Company A's (or a participating subsidiary's) payroll department as disbursing agent for the trustee for distribution to participants.

The above ruling is based on the assumption that Plan X will be qualified under section 401(a), 401(k), and 409 of the Code, and the related trust will be tax exempt under section 501(a) at the time that the above transaction takes place. In addition, we are assuming that the subject shares allocated to the participants' accounts in Plan X are "applicable employee securities" within the meaning of section 404(k)(3) with respect to the subject dividends.

This ruling is also based on the assumption that the proposed dividends do not constitute, in substance, an evasion of taxation within the meaning of section 404(k)(5)(A) of the Code. We are expressing no opinion as to whether or not the disallowance of deductions provided for in that section would be applicable here.

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

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd
Chief, Employee Plans
Technical Branch 2

Enclosures:
Deleted copy of letter
Notice of Intention to Disclose