

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

200105067

Uniform Issue List 401.00-00

Contact Person:

Telephone Number:

In Reference to:

T:EP:RA:T3

Date:

LEGEND:

Company A:

Company B:

Buyer C:

Buyer D:

Plan X:

Dear

This letter is in response to a request for a ruling letter submitted on your behalf by your authorized representative on September 12, 2000, as supplemented by a letter dated September 18, 2000, and a telephone conversation with your authorized representative on October 19, 2000. This request concerns the consequences of certain distributions described in section 401(k) of the Internal Revenue Code ("Code"). Your authorized representatives have submitted the following facts and representations in support of the requested rulings:

Company A maintains Plan X, which is a profit sharing plan containing a cash or deferred arrangement as described in Code section 401(k). Plan X is qualified under section 401(a).

Company A is in the business of providing a wide spectrum of data products, data integration services, mailing list services, modeling and analysis, information technology outsourcing services, and data warehousing and decision support services to major domestic and international companies.

In 1995, Company A acquired Company B, which became a wholly-owned subsidiary of Company A. Company B develops and markets real property data products to title, real estate, and financial companies. Company B focuses entirely on regional real property data applications. When Company A acquired Company B, the only function of Company B's

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business which was moved to Company A was the component which collects data on real property. This component was a very small part of Company B which was not essential to the ongoing independent operation of Company B. Company B remained an independent entity and retained its own separate management and administration department, as well as a separate accounting and billing system.

Company A recently sold over 85 percent of the assets of Company B to Buyer C and Buyer D, neither of which is related to Company A. Company A continues to maintain Plan X, and neither Buyer C nor Buyer D will maintain Plan X. Certain former employees of Company B transferred employment to Buyer C and Buyer D as a result of the asset sale. Company A proposes to distribute to these former employees their entire Plan X account balances attributable to section 401(k) deferrals. These distributions will be made in the form of lump sum distributions within the meaning of Code section 402(d)(4).

Based on the foregoing facts and representations, your authorized representatives have requested the following rulings on your behalf:

1. That the disposition of Company B by Company A to Buyer C and Buyer D is a disposition of substantially all the assets used in a trade or business within the meaning of Code section 401(k)(10)(A)(ii); and
2. That the distribution from Plan X of the Company B account balances attributable to the 401(k) deferrals with respect to participants who became employed by Buyer C and Buyer D pursuant to the sale of assets will not violate the distribution restrictions set forth in Code section 401(k)(2)(B)(i).

Code section 401(a) provides that a trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section if certain requirements are met.

Code section 401(k)(1) states in pertinent part that a profit sharing plan shall not be considered as not satisfying the requirements of subsection (a) merely because the plan includes a qualified cash or deferred arrangement.

Code section 401(k)(2) sets forth the requirements to be a qualified cash or deferred arrangement, one of which is that distributions may not be made earlier than the occurrence of certain stated events. Section 401(k)(2)(B)(i)(II), 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 to an unrelated corporation, but only with respect to an employee who continues employment with the corporation acquiring such assets.

Section 1.401(k)-1(d)(4) of the Income Tax Regulations provides rules applicable to distributions upon the sale of assets. This regulation 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

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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 assets 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 Code sections 414(b), (c), (m), or (o) after the sale or other disposition. Section 1.401(k)-1(d)(5) of the regulations provides, in pertinent 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.

Your authorized representatives have represented that Company B is treated as a separate and distinct business from the other types of business conducted by Company A with its own separate management and administration department, as well as a separate accounting and billing system. Based on all the facts presented herein, we have determined that Company B is a trade or business as that term is used in Code section 401(k)(10)(A)(ii).

In this case, Company A sold to Buyer C and Buyer D, unrelated entities, more than 85 percent of the assets of Company B. Company A continues to maintain Plan X, and Buyer C and Buyer D do not maintain Plan X, after such sale. Distributions will be made in the form of lump sum distributions as described in Code section 402(d)(4).

Accordingly, with respect to your requested rulings, we rule as follows:

1. That the disposition of Company B by Company A to Buyer C and Buyer D is a disposition of substantially all the assets used in a trade or business within the meaning of Code section 401(k)(10)(A)(ii); and
2. That the distribution from Plan X of the Company B account balances attributable to the 401(k) deferrals with respect to participants who became employed by Buyer C and Buyer D pursuant to the sale of assets will not violate the distribution restrictions set forth in Code section 401(k)(2)(B)(i).

This ruling letter is based on the assumption that Plan X continues to be otherwise qualified under Code section 401(a) at all relevant times.

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.

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

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3
Tax Exempt and Government Entities Division

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