



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Uniform Issue List: 401.00-00
402.00-00

AUG 19 2004

T:EP:RA:T3

Attention:

LEGEND:

Company A	=
Company B	=
Company C	=
Court D	=
Sum M	=
Plan X	=
Plan Y	=

Dear:

This is in response to the July 1, 2003, letter filed by your authorized representative on your behalf, as supplemented by correspondence dated March 12, 2004, in which you request letter rulings under sections 401(a) and 402 of the Internal Revenue Code (the "Code"). The following facts and representations support your ruling request.

Plan Y was established by Company B effective July 1, 2003. Plan Y was a defined contribution plan that included a qualified cash or deferred arrangement under section 401(k) of the Code. Plan Y was qualified under section 401(a). Company B was acquired by Company A in as part of a stock purchase transaction. Contemporaneous with the acquisition of Company B, Plan Y was terminated. The Form 5310, Application for Determination for Terminating Plan, gave the date of termination of Plan Y as July 31, 2003. On or about April 22, 2004, Plan Y received a favorable determination letter from the Internal Revenue Service in connection with the termination. Participants in Plan Y were offered the option of taking distributions of their plan benefits or rolling them over into Plan X. Plan X is maintained by Company A, and is an Employee Stock Ownership Plan as described in section 4975(e) of the Code, and is qualified under section

401(a). Distributions to electing Plan X participants were made during _____ and were completed by August 1, _____.

In _____ two separate lawsuits were filed in Court D by unrelated shareholders of Company B with respect to the proposed acquisition of Company B by Company A (the "Litigation") attempting to block the acquisition. Named defendants were the officers and directors of Company B. Plan Y was not a party to the Litigation. Shareholders of Company B maintained that the acquisition of Company B by Company A involved unfair dealing in that the defendants failed to take steps necessary to ensure that the plaintiffs and other similarly situated shareholders would receive the maximum realizable value for their common stock and that the defendants failed to adequately exercise independent business judgment. Ultimately, the plaintiffs' efforts to block the acquisition were rejected by the court and the sale took place as scheduled. Following the sale, Company A transferred all the assets of Company B and facilities to Company C, a wholly owned subsidiary of Company A. Following court proceedings, a settlement was reached between the litigants and court approval of the settlement was entered on December _____. By this date, the assets of Plan Y had already been paid out to its participants and a final Form 5500, Annual Return/Report of Employee Benefit Plan, had been filed.

A notice of class action settlement was prepared and forwarded by Court D in _____ to all shareholders of record who held Company B stock on March 25, _____. A notice was also sent to Plan Y. On March 14, _____, Company C, on behalf of Plan Y, completed and forwarded a proof of claim to the court, in the amount of Sum M, as required by the notice of class action settlement. In December _____, a check from the court, representing Plan Y's share of the class action settlement, was received by Company A. Because neither Company B nor Plan Y existed at that time, the check was placed in trust in Company C until it could be determined how to allocate the proceeds.

Company A proposes to allocate or distribute the proceeds from the settlement of the Litigation to those individuals who were participants in Plan Y as of March 25, _____ and who were invested in stock of Company B through Plan Y as of that date. Some of the individuals are currently employed by Company A or affiliates of Company A and currently participate in Plan X. Others have terminated employment with Company A or affiliates of Company A and are no longer participants in Plan X. Some employees were never employed by Company A or its affiliates and were cashed out of Plan Y when it terminated.

Company A proposes to carry out the allocation of the Litigation settlement proceeds to the former employees of Company B who satisfy the following requirements: (a) the employees were employed by Company B some time prior to March 25, _____, (b) they were participants in Plan Y on March 25, _____, (c) on March 25, _____ their Plan Y accounts included shares of Company B stock; and (d) they were not defendants in the Litigation at the time of the court-approved settlement.

Company A proposes to distribute the settlement proceeds on a prorated basis among the eligible Plan Y participants based upon the Plan Y participant account balances invested in Company B stock on March 25, _____. The allocation will be distributed on a single date as a single sum distribution, following receipt by Company A of a favorable ruling from the Internal Revenue Service. A portion of the allocation amounts shall be placed in the respective participant accounts under Plan X as a portion of the vested account balances of the affected Plan X participants, for those litigants who were participants in Plan Y on March 25, _____ and who are current participants. Another portion will be placed in accounts under Plan X on behalf of beneficiaries of the December 22, _____ settlement who were participants in Plan X but who do not

remain so. Said portion will be distributed to affected former Plan X participants as soon as administratively feasible.

With respect to litigants who participated in Plan Y but who were never participants in Plan X, you request that the Internal Revenue Service treat the existing Company C trust (which holds the settlement proceeds from the class action Litigation) as a continuation of the trust that was part of Plan Y. In this regard, the trust will be deemed to hold the settlement proceeds solely for the purpose of making distributions to those former participants of Plan Y. Said distributions will be made as soon as administratively feasible.

Based on the foregoing, the following rulings have been requested that Company B Litigation settlement be deemed a restorative payment to Plan X and:

1. That the portion of the proceeds from the Litigation settlement contributed to Plan X will not be treated as an excess contribution to Plan X under section 404 of the Code, and will not be subject to the excise tax on excess contributions under section 4972.
2. That the portion of the proceeds from the Litigation settlement contributed to Plan X will not be subject to the limitations on allocations under section 415(c) of the Code.
3. That distributions made from the Company C trust to former participants of Plan Y who were never participants in Plan X, described herein, will be eligible for tax-deferred rollover treatment pursuant to Code section 402(c), and the 60-day rollover period prescribed in Code section 402(c)(3) commences on the date a distribution is received by the payee or distributee thereof.

With respect to your ruling requests, section 401(a) of the Code sets down certain rules governing the qualification of employer sponsored retirement plans. Section 501(a) provides, in relevant part, that an organization described in section 401(a) shall be exempt from taxation under Subtitle A unless such exemption is denied under sections 502 or 503.

Section 402(a)(1) of the Code provides that, except as otherwise provided in this section, any amount actually distributed to any distributee by an employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 (relating to annuities).

Section 402(c)(1) of the Code provides that, if an employee transfers any portion of an eligible rollover distribution into an eligible retirement plan, the amount so transferred shall not be includible in income for the taxable year in which paid.

Section 402(c)(4) of the Code provides that an "eligible rollover distribution" is a distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust; except that such term shall not include (A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made- (i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or (ii) for a specified period of 10 years or more; B) any distribution to the extent such distribution is required under section 401(a)(9), and (C) any distribution which is made upon hardship of the employee.

Section 402(c)(8)(B) of the Code defines an eligible retirement plan to include, an individual retirement account described in section 408(a), an individual retirement annuity described in section 408(b); a qualified trust, and an annuity plan described in section 403(a).

Section 402(c)(3) of the Code provides, generally, that section 402(c)(1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

Section 402(c) of the Code, by its terms, refers to distributions made from a section 401(a) retirement plan.

In this case, pursuant to Company B's intended termination of Plan Y during calendar year , affected participants, referenced above, were entitled to receive amounts due them under Plan Y. Under the facts presented in this case, we believe that it is appropriate to treat the Litigation settlement proceeds as amounts due former Plan Y participants under Plan Y.

In this regard, during , Company B was unable to either distribute to affected Plan Y participants or transfer to Plan X the portion of Plan Y's assets that consisted of the Litigation settlement proceeds since said proceeds were not available to be distributed or transferred until the settlement was reached with Company B during , and the settlement proceeds received in .

As a result, affected Plan Y participants received, either as distributions or as transferred amounts, less than they were entitled to receive under the provisions of Plan Y.

As noted above, individuals who were participants in Plan Y at the time of its "termination" were given the option of having the distributions "rolled over" into Plan X. As a result, many affected Plan Y participants had accounts created under Plan X. Thus, the settlement proceeds contributed to Plan X, whether on behalf of current Plan X participants who were formerly Plan Y participants, or on behalf of former Plan X participants who were formerly Plan Y participants, represent additional amounts due said participants under Plan X as a result of the transfers from Plan Y. Said amounts do not represent additional contributions made on their behalf to Plan X.

The issue remains as to whether distributions to former Plan Y participants who were never Plan X participants should be treated as being made from said Plan Y and, therefore, eligible for Code section 402(c) treatment. The facts of this case indicate that the Company C Trust was created by Company C as a result of proceeds being received from the class action suit that were due to former Plan Y participants. Furthermore, although Company C intended to terminate Plan Y in August 1999, it is apparent that Company C was not successful in distributing all of Plan Y's assets by its target date due to the class action suit. Thus, we believe that it is appropriate to treat the trust as holding Plan Y assets and to treat the amounts which will be distributed from said trust to former Plan Y participants who were never Plan X participants as being paid directly from Plan Y as long as the plan is updated to meet current qualification requirements. As a result, we believe it is appropriate for distributions from said trust to qualify for treatment under section 402(c) of the Code as if they came directly from the trust of Plan Y as long as distributions are made in accordance with the terms of Plan Y.

Thus, with respect to your ruling requests, we conclude that the Company B Litigation settlement proceeds contributed to the accounts of affected current or former Plan X participants shall be deemed a restorative payment to Plan X. Thus, with respect to those proceeds, we conclude:

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1. That the portion of the proceeds from the Litigation settlement contributed to Plan X will not be treated as an excess contribution to Plan X under section 404 of the Code, and will not be subject to the excise tax on excess contributions under section 4972; and

2. That the portion of the proceeds from the Litigation settlement contributed to Plan X will not be subject to the limitations on allocations under section 415(c) of the Code.

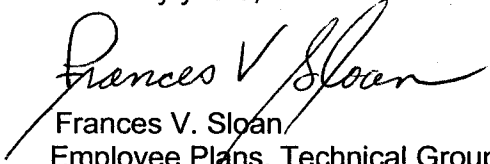
With respect to the portion of the Litigation proceeds held in Trust C, we conclude as follows: That distributions to former participants of Plan Y, who were never participants in Plan X described herein, made from the Company C trust, will be eligible for tax-deferred rollover treatment pursuant to section 402(c) of the Code, and the 60-day rollover period prescribed in section 402(c)(3) of the Code commences on the date a distribution is received by the payee or distributee thereof.

This ruling letter assumes that Plan Y was qualified under Code section 401(a) at all times relevant thereto. It also assumes that each affected Plan Y participant referenced herein received a distribution (or distributions) as asserted.

If you wish to inquire about this ruling, please contact ***** (ID **-****) at (***)
-*. Please address all correspondence to SE:T:EP:RA:T3.

Pursuant to a power of attorney on file in this office, the original of this letter ruling is being sent to your authorized representative.

Sincerely yours,


Frances V. Sloan
Employee Plans, Technical Group 3

Enclosures:
Deleted copy of letter ruling
Form 437

CC: