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

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

APR - 6 2009

Uniform Issue List: 402.07-00

SE:T:EP:RA:T3

LEGEND:

Company A = * * *

Company B = * * *

Company C = * * *

Sub 1 = * * *

Sub 2 = * * *

Plan X = * * *

Plan Y = * * *

State X = * * *

Dear * * *:

This letter is in response to a request for a letter ruling dated October 20, 2008, as supplemented by letters and other correspondence dated January 12, 2009, January 30, 2009, and March 9, 2009, submitted on behalf of Company A by its authorized representative, regarding the federal tax treatment under section 402(e)(4) of the Internal Revenue Code ("Code") of shares of common stock of Company A and shares of common stock of Company B that were held by Plan X, or transferred to Plan Y, pursuant to a series of corporate transactions constituting a corporate reorganization of Company C under Code section 368(a)(1) ("Reorganization") to which Company A and Company B were parties under Code section 368(b).

The following facts and representations have been submitted under penalty of perjury in support of the rulings requested:

Company A is a State X corporation. Company A, Company B and Sub 2 were each created in anticipation of certain transactions which, in part, constitute the Reorganization.

Prior to the Reorganization, Company C was a publicly-traded State X corporation and the corporate parent of an affiliated group of corporations that filed a consolidated federal income tax return. The purpose of the Reorganization was to resolve issues relating to the competition for capital between two of Company C's main lines of business, and to facilitate a certain investment opportunity available solely to one of such lines of business, which line of business was primarily conducted by Sub 1. Sub 1 was a wholly-owned subsidiary of Company C prior to the Reorganization.

As part of the Reorganization, Company A was formed as a wholly-owned subsidiary of Company C, and Company B and Sub 2 were formed as wholly-owned subsidiaries of Company A. Company B was formed by Company A for purposes of the Company B Spin-Off, as described below.

In an initial transaction under the Reorganization, Sub 2 was merged into Company C and every three shares of Company C common stock were automatically converted into one share of Company A common stock (the "Company C Merger"). As a result of the Company C Merger, Company C continued as the surviving corporation and as a direct, wholly-owned subsidiary of Company A. Immediately after the Company C Merger, Company A owned 100% of the equity of the companies that owned and operated both of Company C's primary lines of business.

Immediately following the effective date of the Company C Merger, Company C was converted to an LLC ("Company C, LLC") that is disregarded from Company A for federal income tax purposes under section 301.7701-3(b)(1)(ii) of the Income Tax Regulations (the "Regulations") (the "Company C Conversion").

Thereafter, Company C, LLC distributed all of the shares of common stock of Sub 1 to Company A in a transaction that was disregarded for federal income tax purposes (the "Distribution"). As a result of the Distribution, Sub 1 became a direct, wholly-owned subsidiary of Company A.

Company A then contributed all of Company C, LLC's membership interests to Company B, a newly-formed and wholly-owned subsidiary of Company A (the "Contribution").

Thereafter, on (the "Distribution Date"), Company A instructed the distribution agent to record in the stock transfer records of Company B the distribution of three shares of Company B common stock to each holder of Company A common stock (other than Class A common stock) as of the record date for the distribution for each share of Company A common stock held by such shareholders of record (the "Spin-Off"), and instructed the distribution agent to mail to each such shareholder a letter of transmittal and instructions with regard to how to exchange certificates representing shares of Company C common stock for certificates representing shares of Company A common stock (for the Company C Merger) and for certificates representing shares of Company B common stock (for the Spin-Off).

As a result of the Spin-Off, Company A and Company B were no longer part of the same controlled group of corporations within the meaning of Code section 414(b), (c), (m) or (o).

Prior to the completion of the Reorganization, employees of Company A, Company B and Company C, and their subsidiaries, participated in a defined contribution plan ("Plan X") sponsored by Company C, which includes both a cash or deferred plan feature and an employee stock ownership plan feature (ESOP), and which is intended to qualify under Code section 401(a). Under Plan X, a participant is permitted to direct the investment of his or her account balance in one or more investment options, including an employer stock fund, offered under Plan X. Plan X provides that, to the extent it is invested in the employer stock fund, such portion of the plan constitutes an ESOP within the meaning of Code section 4975(e)(7).

Effective as of January 1, 2007, Company A adopted a defined contribution plan ("Plan Y") for its employees and those of its subsidiaries, which has both a cash or deferred plan feature and an employee stock ownership plan feature, and which is intended to qualify under Code section 401(a). Under Plan Y, a participant is permitted to direct the investment of his or her account balance in one or more investment options, including an employer stock fund, offered under Plan Y. Plan Y provides that the portion of the Plan invested in the employer stock fund is intended to be an ESOP within the meaning of Code section 4975(e)(7).

Effective as of the Distribution Date, Company A and its subsidiaries ("Company A Group") assumed the liabilities and obligations of Company B and its subsidiaries ("Company B Group") with regard to employees of Company B Group who became employed by Company A Group as a result of the Reorganization, and the employees of Company A Group, subject to certain exceptions, ceased participation in Plan X at such time and became participants in Plan Y.

The assets and liabilities of Plan X attributable to employees of Company A Group were transferred directly to Plan Y as soon as administratively feasible after the Distribution Date. The assets of Company A Group employees that were transferred from Plan X to Plan Y contained shares of common stock of both Company A and Company B. On June 30, 2008, Company A submitted an application for a determination from the Internal Revenue Service that Plan Y meets the requirements of Code section 401(a) and that its trust is exempt from tax under Code section 501(a).

Effective as of the Distribution Date, Company B and its subsidiaries ("Company B Group") retained the liabilities and obligations of Company B Group with regard to employees who remained employed by Company B Group on the Distribution Date. The assets of Plan X attributable to such employees were retained by Plan X, and Company B became the new plan sponsor of Plan X, effective as of the Distribution Date.

Based on the foregoing facts and representations, Company A's authorized representative has requested the following rulings:

(1) The shares of Company B stock transferred to Plan Y as a result of the Reorganization will be treated as "securities of the employer corporation" for purposes of Code section 402(e)(4), and the net unrealized appreciation in such shares may be excluded from gross income upon distribution by Plan Y to a participant or beneficiary to the extent provided in Code section 402(e)(4).

(2) The shares of Company A stock transferred to Plan Y as a result of the Reorganization will be treated as "securities of the employer corporation" for purposes of Code section 402(e)(4), and the net unrealized appreciation in such shares may be excluded from gross income upon distribution by Plan Y to a participant or beneficiary to the extent provided in Code section 402(e)(4).

(3) For purposes of determining net unrealized appreciation under Code section 402(e)(4), to the extent that the Reorganization is a tax-free transaction under the Code, the basis of Company A shares and Company B shares held by Plan X will be determined by allocating the basis of the shares of Company C common stock held by Plan X immediately before the Reorganization between the shares of Company A and shares of Company B held by Plan X immediately after the Reorganization, in accordance with Code section 358.

(4) For purposes of determining the net unrealized appreciation under Code section 402(e)(4), the basis of the Company A shares and Company B shares transferred to Play Y will be determined as described in ruling request 3, above, and will not be changed by the transfer of those shares from Plan X to Plan Y.

With respect to requested rulings 1 and 2, Code section 402(e)(4)(B) provides that, in the case of a lump sum distribution described in Code section 402(e)(4)(D) that includes securities of the employer corporation, unless a taxpayer elects otherwise, there shall not be included in gross income the net unrealized appreciation attributable to that part of the distribution that consists of securities of the employer corporation.

In Revenue Ruling 73-312, 1973-2 C.B. 142, a corporation merged into a successor corporation pursuant to an agreement providing for the exchange of the predecessor corporation's stock (including stock held by the predecessor corporation's qualified trust) for stock of the successor corporation. The Internal Revenue Service (the "Service") ruled that, due to the fact that the stock of the predecessor corporation was held or acquired by the predecessor corporation's exempt trust while the affected employees were covered under the predecessor's plan, the mere conversion of the stock of the predecessor corporation into stock of the successor corporation did not change the status of the stock as "securities of the employer" within the meaning of Code section 402(a) (the predecessor to Code section 402(e)(4)(E)(ii)).

In Revenue Ruling 73-29, 1973-1 C.B. 98, securities of an employer corporation held by its qualified plan were transferred to the qualified trust of an unrelated corporation when the employer corporation sold part of its business and transferred some of its employees to the unrelated corporation. The Service held that shares of stock of the original employer corporation distributed thereafter from the unrelated corporation's qualified trust to an employee of the unrelated corporation who was a former employee of the original employer corporation were "securities of the employer" within the meaning of Code section 402(a)(2) when such shares were held by the original employer corporation's qualified plan, and that such shares retained their status as securities of the employer after those shares and the accounts of former employees of the original employer in which they were held were transferred to the qualified trust of the unrelated corporation.

Code section 402(e)(4)(E)(ii) provides that, for purposes of Code section 402(e)(4), the term "securities of the employer corporation" includes securities of the parent or subsidiary corporation (as defined in subsections (e) and (f) of Code section 424) of the employer corporation.

In the present case, Company C was the corporate parent of Company A prior to the Company C Merger, and a wholly-owned subsidiary of Company A after the Company C Merger. Company B was a wholly-owned subsidiary of Company A at all relevant times. Therefore, at the time of the Spin-Off, shares of Company A common stock and Company B common stock constituted "securities of the employer corporation" within the meaning of Code section 402(e)(4)(E)(ii).

Plan X held shares of Company C common stock prior to the Reorganization. As a result of the Company C Merger, Plan X received shares of Company A common stock (converted from shares of Company C common stock). In the Spin-Off, Plan X (as a holder of shares of Company A common stock) acquired shares of Company B common stock.

Although Company A and Company B were no longer members of the same controlled group of corporations after the Spin-Off, the shares of Company A and Company B common stock constitute "securities of the employer corporation" at the time of the Spin-Off for purposes of Code section 402(e), in accordance with Revenue Ruling 73-29, Revenue Ruling 73-312 and Code section 402(e)(4)(E)(ii), and the transfer of such shares to Plan Y pursuant to the Spin-Off does not alter their status as securities of the employer corporation for such purposes.

Accordingly, with respect to requested rulings 1 and 2, we conclude that the shares of common stock of Company A and of Company B transferred to Plan Y as a result of the Spin-Off will be treated as "securities of the employer corporation" for purposes of Code section 402(e)(4) and the net unrealized appreciation in such shares may be excluded from gross income upon distribution by Plan Y to a participant or beneficiary, to the extent provided in Code section 402(e)(4).

With respect to requested ruling 3, Company A and Company B received an opinion from their legal counsel to the effect that the Spin-Off is a tax-free transaction under Code section 355.

In addition, the Service ruled, in a letter ruling to Company C dated and based on information submitted and representations made by Company C, that the Spin-Off would be tax-free to Company A and its shareholders under Code section 355(a)(1) and certain other Code sections. In the same ruling, the Service also ruled that the aggregate tax basis of the shares of common stock of Company A that a Company C shareholder received in the Company C Merger would be the same as the aggregate tax basis of the shares of common stock of Company C that were converted into Company A stock in the Company C Merger (decreased, as applicable, with regard to cash received for fractional shares), and that the aggregate tax basis of the shares of common stock of Company B and Company A in the hands of Company A shareholders after the Spin-Off will be the same as the aggregate tax basis of the shares of common stock of Company A held by such shareholders immediately before the Spin-Off, in each case allocated as provided under Code section 358.

Accordingly, with respect to requested ruling 3, to the extent that the transactions constituting the Reorganization are tax-free under the applicable sections of the Code including, but not limited to, Code section 355, we conclude that, for purposes of determining net unrealized appreciation under Code section 402(e)(4), the basis of the Company A shares and Company B shares held by Plan X will be determined by allocating the basis in the shares of Company C common stock held by Plan X immediately before the Reorganization between the shares of Company A common stock and Company B common stock held by Plan X immediately after the Reorganization, in proportion to their relative fair market value in accordance with the rules of Code section 358 and its associated Regulations.

With respect to requested ruling 4, in Revenue Ruling 80-138, 1980-1 C.B. 87, the Service held that the transfer of securities of the employer corporation from the exempt trust of a parent corporation to a new exempt trust established by its subsidiary did not change the basis of the securities for purposes of determining net unrealized appreciation of the securities, provided that the transfer was not a taxable event.

Therefore, with respect to requested ruling 4, to the extent that the transactions constituting the Reorganization are tax-free transactions under the applicable sections of the Code including, but not limited to, Code section 355, we conclude that, for purposes of determining net unrealized appreciation under Code section 402(e)(4), the basis of the Company A shares and Company B shares transferred from Plan X to Plan Y will be determined as described in ruling (3), and will not be changed by the transfer of such shares from Plan X to Plan Y.

This ruling letter is based on the assumption that Company C will be treated as part of Company A's controlled group of corporations for purposes of Code section 1563(a) as it relates to Code section 409(l)(4) at all relevant times prior to, and, as of, the time of the Spin-Off.

This ruling letter is based on the assumptions that Plan X and Plan Y are qualified under Code section 401(a) and that their related trusts are exempt from tax under Code section 501(a) at all relevant times.

This ruling letter is based on the assumption that Plan X and Plan Y meet the requirements of Code section 4975(e)(7) at all relevant times.

This ruling letter is based on the assumption that the Reorganization meets the requirements of Code section 355.

This ruling letter is based on the assumption that the transfer of assets from Plan X to Plan Y complies in all respects with Code section 414(l).

No opinion is expressed or implied concerning the tax consequences of the Reorganization under any other provisions of the Code or the Regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Reorganization that are not specifically covered by the above rulings.

This ruling letter is directed only to the taxpayer requesting it. Code section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative. If you wish to inquire about this ruling, please contact * * * , I.D. * * *, at * * *. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely,

Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3

cc: * * *

* * *

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose