200024056

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Uniform Issue List: 401.00-00

Contact Person:

Telephone Number:

In Reference to:
T:EP:RA:T3

Date:
MAR 21 2000

Attention:

Legend:

Corporation A =

Corporation B =

Facility C =

Corporation D =

Department E =

Plan X =

Dear

This is in response to your request for a ruling, dated October 22, 1999, submitted by your authorized representative concerning whether distributions from Plan X are in accordance with section 401(k) of the Internal Revenue Code (the "Code").

Corporation A is a systems engineering company, specializing in defense, environmental and energy related programs and products. Corporation A maintains Plan X for its eligible employees. Plan X is a defined contribution plan that includes a cash or deferred arrangement as well as an employee stock ownership plan. Plan X is qualified under section 401(a) of the Code and its trust is exempt under section 501(a) of the Code.

A division of Corporation A has been working as a subcontractor for Corporation B in managing Facility C. In general, Facility C is the responsibility of private contractors working under the direction of Department E. For the last five years, Corporation B has been the primary contractor of Facility C. Under the arrangement with Corporation B, Corporation A provides centralized training programs for the conduct of operations, compliance training, criticality training, environmental safety and health training, and other training skills. In addition, data base design architecture definition and other related data

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base support are provided. In all, approximately 9,000 employees performs services at Facility C. Corporation A supplies approximately 150 of these employees (the "Subcontract Employees") to provide these services. During this period, Corporation A has offered benefits to the Subcontract Employees, including participation in Plan X.

Department E has announced that, effective October 1, 1999, Corporation B will no longer be the primary contractor of Facility C in which Corporation A participates as a subcontractor. Corporation D will be the new primary contractor. Under the new arrangement, the Subcontract Employees will no longer be employed by Corporation A but, rather, will be terminated from their employment with Corporation A and subsequently hired by Corporation D to continue servicing and maintaining Facility C.

There will be no liquidation, merger, transfer of corporate assets or other similar corporate transaction associated with the discharge of the Subcontract Employees. Neither Corporation A nor Corporation B has an ownership interest in Corporation D, nor will Corporation A have any continued involvement at Facility C.

Based on the foregoing, you request a ruling that distributions from Plan X may be made to the Subcontract Employees who are terminated by Corporation A and hired by Corporation D on the grounds that a separation from service has occurred within the meaning of Section 401(k)(2)(B)(i)(I) 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)(I) further provides that one of these distributable events is "separation from service".

Revenue Ruling 79-336, 1979-2 C.B. 187 provides that an employee will be considered separated from service within the meaning of section 402(e)(4)(A) of the Code only upon the employee's death, retirement, resignation, or discharge, and not when the employee continues on the same job for a different employer as a result of the liquidation, merger, or consolidation, etc. of the former employer (i.e. the "Same Desk Rule"). Revenue Ruling 80-129, 1980-1 C.B. 86 extended this rationale to situations where an employee of a partnership or corporation, the business of which is terminated, continues on the same job for a successor employer formed to continue the business.

In this case, the issue is whether the Same Desk Rule should be applied to the employees who are discharged by Corporation A and reemployed by Corporation D. There is no liquidation, merger, transfer of corporate assets or other similar corporate transaction associated with the discharge of those employees. Neither Corporation A nor Corporation B has an ownership interest in Corporation D, nor will Corporation A have any continued involvement at Facility C. Thus, the Same Desk Rule should not be applied here.

Accordingly, based on the facts presented, we conclude, with respect to your ruling request that distributions from Plan X may be made to the Subcontract Employees who are terminated by Corporation A and hired by Corporation D on the grounds that a separation from service has occurred within the meaning of Section 401(k)(2)(B)(i)(I) of the Code.

The above rulings are based on the assumption that Plan X will be otherwise qualified under sections 401(a) and 401(k) of the Code, and the related trust will be tax exempt under section 501(a) at the time that the above transaction takes place.

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

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,

Frances V. Sloan

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

Enclosures:
Deleted copy of letter
Notice of Intention to Disclose

CC: