Internal Revenue Service

Department of the Treasury

Washington, DC 20224

200027058

SIN: 402.07-00

xxxxx
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xxxxx

Attn: xxxxx

Contact Person:
xxxxxx
Telephone Number:
xxxxx
In Reference to:
T:EP:RA:T2/50-06967
Date:
APR 10 2000

Legend:

Corporation M = xxxxx

Plan X = xxxxx

Plan Y = xxxxx

State A = xxxxx

Dear xxxxx:

This is in response to your letter dated May 19, 1999, as supplemented by correspondence dated October 28, 1999, and November 22, 1999, in which your authorized representative requested private letter rulings on your behalf regarding the Federal income tax consequences of a certain transfer from a profit-sharing plan to a money purchase pension.

Corporation M is organized under the laws of State A. Corporation M maintains Plan X, a profit-sharing plan within the meaning of section 1.401-1(b)(1)(ii) of the Income Tax Regulations. Plan X was established effective July 1, 1956, and includes a cash or deferred arrangement qualified under Internal Revenue Code section 401(k) and an employee stock option plan ("ESOP") within the meaning of Code section 4975(e)(7)(A). The most recent favorable determination letter on the qualified status of Plan X was issued July 18, 1996. The terms of Plan X provide for lump sum distributions described in Code section 402(d)(4)(A).

Corporation M adopted Plan Y, a money purchase pension plan, on April 19, 1999, and filed for a determination

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letter on May 14, 1999, as to Plan Y's initial qualification status under Code section 401(a) and tax-exempt status under Code section 501(a). On November 19, 1999, the Service issued a favorable determination letter on behalf of Plan Y.

The assets of Plan X and of Plan Y will be held in a master trust maintained by a third party trustee. The trustee will maintain an account for Plan Y that is separate from the account maintained for Plan X.

Under the terms of Plan Y, its participants are provided a choice of self-directed investment funds that is identical to the choice provided to the participants of Plan X for the investment of their salary reduction contributions.

Employer contributions to Plan X are invested in the Company Stock Fund which is invested in Corporation M common stock and is held under a separate trust from the other assets of Plan X. For purposes of Plan X, Corporation M common stock constitutes "securities of the employer corporation" within the meaning of section 1.402(a)-1(b)(1)(ii) of the Income Tax Regulations. Plan X ESOP accounts are invested in the ESOP Shares Fund under the Company Stock Fund. Corporation M common stock is registered under the Securities Act of 1933 and is publicly traded. Under section 11.01 of Plan X, a participant/beneficiary may elect to receive payments from the Company Stock Fund in the form of Corporation M common stock, cash or both.

Section I of Plan Y defines the following terms:

"Employer", Plan Section 1.08:
Corporation M and any subsidiary and affiliated company specifically designated by the Board of Directors as such for the purposes of this Plan, provided that such subsidiary or affiliated company adopts this Plan by resolution of its own board of directors.

"Eligible Employee", Plan Section 1.05:
(A) an "Employee" who (i) has attained age 59 1/2, and (ii) receives a lump sum distribution (within the

meaning of Code section 402) of his entire account under Plan X; or

(B) a "Former Employee" who receives a lump sum (within the meaning of Code section 402) of his entire account under Plan X.

It is represented that the sole purpose of Plan Y is to accept rollover distributions from Plan X; thus, Plan Y will receive no annual employer contributions. Such rollover distributions to Plan Y will permit active and former employees to enjoy favorable tax treatment for net unrealized appreciation (NUA) on Corporation M stock, while continuing to invest the remainder of their accounts through the same investment options available under Plan X.

Based on the above facts and representations, the following rulings have been requested:

1.) For purposes of determining whether the gain associated with NUA of employer stock distributed from Plan X is eligible for deferral of income recognition, in receiving the balance to his or her credit in Plan X within one taxable year, a Plan X participant may transfer the assets he or she receives, other than employer stock, on a nontaxable basis to Plan Y without affecting the status of such distribution from Plan X as a qualifying lump sum distribution under Code section 402(e)(4)(B).

2.) Where a distribution is made directly to a Plan X participant within one taxable year of all employer stock credited to such participant under Plan X and, within the same taxable year, all remaining assets includible in such participant's balance to the credit under Plan X are, pursuant to the participant's election under Code section 401(a)(31)(A), paid directly to Plan Y, the transaction in the aggregate constitutes a qualifying lump sum distribution under section 402(e)(4)(B), allowing such participant to defer income recognition on the employer stock until its disposition.

3.) Ruling requests one and two apply to transactions described therein that occur in 1999 or in later tax years.

Code section 402(a) provides a general rule which states that, except as otherwise provided in section 402, any amount actually distributed to any distributee by any

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 Code section 72 (relating to annuities).

Code section 402(e)(4)(B) provides that in the case of any lump sum distribution which includes securities of the employer corporation, the NUA on those securities is excluded from the distributee's gross income unless otherwise elected by the distributee.

Code section 402(e)(4)(D), effective for tax years beginning before 1/1/2000 provides that the term "lump sum distribution" has the meaning given it by section 402(d)(4)(A) without regard to the minimum years of service rule under section 402(d)(4)(F).

Code section 402(d)(4)(A) defines a "lump sum distribution" as the distribution or payment within 1 taxable year of the recipient of the balance to the credit of an employee which becomes payable to the recipient--

(i) on account of the employee's death,
(ii) after the employee attains age 59 1/2,
(iii) on account of the employee's separation from service, or
(iv) after the employee has become disabled (within the meaning of Code section 72(m)(7),

from a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501 or from a plan described in section 403(a).

Code section 402(d)(4)(C) provides that, for purposes of determining the "balance to the credit" of an employee, all trusts which are part of a plan shall be treated as a single trust, all pension plans maintained by the employer shall be treated as a single plan, all profit-sharing plans maintained by the employer shall be treated as a single plan, and all stock bonus plans maintained by the employer shall be treated as a single plan.

Code section 402(e)(4)(D)(i) and (ii), effective for tax years beginning after 12/31/99, provides the definition of "lump sum distribution" and the explanation of aggregation of certain trusts and plans, for purposes of

the tax treatment of NUA as described herein for such future tax years. The pertinent language of the definition of "lump sum distribution" and the explanation of aggregation are identical to section 402(d)(4)(A) and (C) for tax years beginning 1/1/2000.

Code section 402(c)(1) provides that if --

(A) any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution,

(B) the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and

(C) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Pursuant to Code section 402(c)(4), a lump sum distribution under section 402(d)(4)(A) constitutes an eligible rollover distribution.

Code section 401(a)(31)(A) provides, in general, that a trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if the distributee of any eligible rollover distribution --

(i) elects to have such distribution paid directly to an eligible retirement plan, and

(ii) specifies the eligible retirement plan to which such distribution is to be paid (in such form and at such time as the plan administrator may prescribe).

Such distribution shall be made in the form of a direct trustee-to trustee transfer to the eligible retirement plan so specified.

The definition of an eligible rollover distribution found under Code section 402(c)(4) is used for purposes of Code section 401(a)(31).

Plan X and Plan Y are the only two qualified plans of Corporation M at issue; one is a profit-sharing plan, one is a money purchase pension plan; and each operates separate from the other. Thus, for purposes of determining the balance to the credit of a Plan X participant for purposes of a lump sum distribution from Plan X, there is no requirement that Plan X and Plan Y be aggregated to each other for treatment as a single plan pursuant to Code section 402(d)(4)(C) (and Code section 402(e)(4)(D)(ii) for tax years beginning after 12/31/99).

Accordingly, with respect to ruling request one, we conclude that for purposes of determining whether the gain associated with NUA of employer stock distributed from Plan X is eligible for deferral of income recognition, in receiving the balance to his or her credit in Plan X within one taxable year, a Plan X participant may transfer the assets he or she receives, other than employer stock, on a nontaxable basis to Plan Y without affecting the status of such distribution from Plan X as a qualifying lump sum distribution under Code section 402(e)(4)(B).

The proposed distributions from Plan X satisfy the definition of a lump sum distribution as that term is defined in Code sections 402(d)(4)(A) and 402(e)(4)(D)(i). Neither the code nor the regulations promulgated thereunder preclude a distribution from being treated as a lump sum under those sections for purposes of Code section 402(e)(4)(B) even if a portion of the distribution is either transferred directly or rolled over into another qualified plan pursuant to Code sections 401(a)(31) or 402(c).

Therefore, with respect to ruling request two, we conclude that where a distribution is made directly to a Plan X participant within one taxable year of all employer stock credited to such participant under Plan X and, within the same taxable year, all remaining assets includible in such participant's balance to the credit under Plan X are, pursuant to the participant's election under Code section 401(a)(31)(A), paid directly to Plan Y, the transaction in the aggregate constitutes a qualifying lump sum

distribution under section 402(e)(4)(B), allowing such participant to defer income recognition on the employer stock until its disposition.

These ruling requests apply to transactions described herein that occur in 1999 or in later years. This ruling is based on the assumption that Plan X and Plan Y will be qualified under Code section 401(a) and their trust will be exempt under Code section 501(a) at all times pertinent to the transaction.

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

Sincerely yours,

Joyce E. Floyd, Manager
Employee Plans Technical Group 2
Tax Exempt and Government Entities Division

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

cc:
xxxxx
xxxxx
xxxxx
xxxxx

xxxxx Key District Office
Attn: Chief, EP/EO