Internal Revenue Service

Index No. 401.29-02

Department of the Treasury

Washington, DC 20224 200134034

Contact Person:

Telephone Number:

In Reference to:

Date: T:EP:RA:T:1

MAY 31 2001

Attn:

Legend:

Company A.....

Company B.....

Company C.....

Plan X.....

Plan Y.....

Facility D.....

Dear :

This is in response to a letter dated August 31, 2000, submitted on your behalf by your authorized representative requesting rulings under section 401(k) of the Internal Revenue Code ("Code"). You submitted the following facts and representations in support of your request.

Prior to December 23, 1999, Company A owned 100 percent of the stock of Company B. The assets of Company B consisted of Facility D located in State M. Company A leased Facility D from Company B, and operated the facility using Company A's own employees. In 1999, there were approximately 115 union hourly employees and approximately 47 salaried employees of Company A connected with the Facility D operation.

In connection with a restructuring of its operations, Company A decided to sell Facility D and other similar businesses. As an initial step in selling its interest in Company B, Company A took Facility D out of operation in October 1999. Although the majority of employees were terminated at this time, approximately 12 union employees were kept on to maintain Facility D until the sale was complete. Twelve salaried employees were also retained to facilitate the future sale of Facility D. The following month, Company A entered into a stock purchase agreement with an unrelated company, Company C, for the purchase of all of the outstanding stock of

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Company B. The transaction closed on or about December 23, 1999, and all of Company A's remaining active employees at Facility D were terminated. The sale agreement did not require Company C to hire any former employees of Facility D, however, following the sale, Company C reopened Facility D and hired in 1999 and 2000 many of Company A's former employees (including those who left both before and after the October, 1999 closure date) to staff the facility ("Hired Employees").

Prior to Company A's sale of its interest in Company B, Company A's eligible salaried employees at Facility D participated in Plan X, and all of its eligible hourly union employees participated in Plan Y. Plans X and Y are cash or deferred arrangements under Code section 401(k). Company A has continued to maintain both plans for the benefit of employees of its remaining operations. Section 7.3 of both Plan X and Plan Y provide for distributions on termination of employment with the employer or an affiliated employer and sale of a subsidiary to other than an affiliated employer with respect to participants who, as a result, cease to be employees. There has been no transfer of assets of Plan X or Plan Y to any plan of Company C.

Based on the above facts and representations, you request the following ruling:

Lump sum distributions of amounts attributable to employer contributions made pursuant to employee deferral elections under Code section 401(k) may be made under Plans X and Y to the Hired Employees because the sale constituted a sale of a subsidiary within the meaning of section 401(k)(10)(A)(iii).

Code section 401(k)(2) provides that in order to be a qualified CODA, amounts contributed to the CODA which are attributable to employer contributions made pursuant to an employee's election may not be distributable to participants or other beneficiaries earlier than certain specified events, including separation from service or an event described in section 401(k)(10).

Code section 401(k)(10)(A)(iii) describes the following event: the disposition by a corporation of such corporation's interest in a subsidiary but only with respect to an employee who continues employment with such subsidiary.

Code section 401(k)(10)(B) provides that an event shall not be treated as described in subparagraph (A) with respect to any employee unless the employee receives a lump sum distribution by reason of the event.

Code section 414(b) provides that for purposes of section 401(a), all employees of all corporations which are members of a controlled group under section 1563(a) (determined without regard to section 1563(a)(4) and (e)(3)(C)) are treated as employed by a single employer.

Code section 401(k)(10)(C) provides that an event shall not be treated as described in clause (ii) or (iii) of subparagraph (A) unless the transferor corporation continues to maintain the plan after the disposition.

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Section 1.401(k)-1(d)(4)(i) of the federal Income Tax Regulations (the "regulations") requires that a plan may not distribute on account of the sale of a subsidiary unless the seller continues to maintain the plan.

Section 1.401(k)-1(d)(4)(iii) of the regulations provides that the distribution must be in connection with the disposition of a subsidiary.

In this case, the employees of Company A who worked for Facility D were terminated in 1999 in connection with the sale of Company B, a wholly owned subsidiary of Company A, to Company C, an unrelated employer. Certain of these employees were subsequently hired by Company C. Pursuant to Code section 414(b), employees of subsidiary B include the employees of Company A for purposes of applying section 401(k)(10)(A)(iii). No plan assets were transferred to a plan of Company C. Accordingly, we rule that lump sum distributions of amounts attributable to employer contributions made pursuant to employee deferral elections under Code section 401(k) may be made to the Hired Employees on account of a sale by a corporation, Company A, of its interest in a subsidiary, Company B, to an unrelated corporation, Company C, as provided in sections 401(k)(2)(B)(i)(II) and 401(k)(10)(A)(iii).

The above rulings are based on the assumption that Plans X and Y are qualified under section 401(a) at all times relevant to the transaction.

This letter is directed only to the taxpayer requested. Code section 6110(k)(3) provides that it 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 yours,

John Swieca

John Swieca
Manager, Employee Plans Technical Group 1
Tax Exempt and Government Entities Division

cc:

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