200241054

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

U.I.L. 401.29-00

JUL 19 2002

XXXXXXXXXXX
XXXXXXXXXXX
XXXXXXXXXXX

T:EP:RA:T2

Attn: XXXXXXX

Legend:

Employer A	= ****
Employer B	= ****
Agreement C	= ****
Group D Employees	= ****
Plan X	= ****
Plan Y	= ****

Dear ****:

This is in response to a ruling request dated ****, as supplemented by correspondence dated ****, submitted on your behalf by your authorized representative, concerning the distribution of elective deferrals as a result of the proposed transaction under section 401(k)(10)(A)(i) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted by your authorized representative:

On March 22, , Employer A entered into Agreement C with Employer B. Pursuant to the terms of Agreement C, Employer B provides personnel management services to Employer A as a co-employer of the Group D Employees assigned to Employer A's worksite including, but not limited to, providing employee benefits through Plan Y, a Code section 401(k) plan.

Employer A did not adopt, and does not sponsor or maintain Plan Y. Employer A does not make any contributions directly to Plan Y. Employer A may, but has yet to do so, direct Employer B to make a matching contribution to Plan Y for the benefit of the Group D Employees assigned to Employer A's worksite. The matching contribution, if any, would then be invoiced to, and paid for by, Employer A as a component of Employer B's fees to Employer A.

Prior to entering into Agreement C with Employer B, Employer A maintained Plan X, a defined contribution plan with a section 401(k) arrangement for the benefit of the Group D Employees. You represent that Plan X is qualified under section 401(a) of the Code. Subsequent to and in accordance with Agreement C, the Group D Employees began participating in Plan Y. Employer A terminated Plan X effective June 1, Employer A received a favorable determination letter on the termination of Plan X dated January 22, from the Internal Revenue Service.

Section 6.8 of Plan X provides, in part, that elective deferrals are not distributable to a participant earlier than separation from service, death or disability. Section 6.8(a) of Plan X provides, in part, that such elective deferrals may be distributed upon the termination of the plan without the establishment of another defined contribution plan other than an employee stock ownership plan (as defined in Code sections 4975(e) or 409) or a Simplified Employee Pension Plan (as defined in Code section 408(k)). Employer A proposes to distribute the elective deferrals, according to the terms of Plan X, to the Group D Employees based upon the termination of Plan X.

You represent that Employer A and Employer B are not members of a controlled group of corporations (as defined under section 414(b) and section 414(c) of the Code) or an affiliated service group (as defined under section 414(m) of the Code). You further represent that Employer A and Employer B are not entities that are required to be aggregated under section 414(o) of the Code. Additionally, you represent that Employer A has not established a plan for the Group D Employees subsequent to the termination of Plan X.

Based on the aforementioned facts and representations, you have requested the following ruling:

> Plan Y does not constitute a successor plan of Employer A for purposes of Code section 401(k)(10)(A)(i), so that Employer A may cause Plan X to distribute the elective deferrals to the Group D Employees upon termination of Plan X

Section 401(k)(2)(A) of the Code defines a qualified cash or deferred arrangement, in part, as any arrangement which is part of a profit sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural electric cooperative plan which meets the requirements of 401(a) under which a covered employee may elect to have the employer make payments as contributions to the trust under the plan on behalf of the employee, or to the employee directly in cash.

Section 401(k)(2)(B) of the Code provides that a qualified cash or deferred arrangement must satisfy certain rules restricting distributions. Under these restrictions, amounts held by a trust which are attributable to employer contributions made pursuant to the employee's election may not be distributable to participants or other beneficiaries earlier than severance of employment, death, or disability; an event described in paragraph (10); in the case of a profit-sharing or stock bonus plan, the attainment of age 591/2; in the case of a profit-sharing or stock bonus plan to which section 402(e)(3) applies, upon

hardship of the employee; and will; and (ii) will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years.

Section 401(k)(10) of the Code contains rules relating to distributions upon plan termination. Section 401(k)(10)(A) provides, in general, that an event described in this subparagraph is the termination of the plan without establishment of maintenance of another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)).

Section 1.401(k)-1(d)(1)(iii) of the Income Tax Regulations ("regulations") provides, in pertinent part, that a cash or deferred arrangement satisfies this paragraph (d) only if it provides that amounts attributable to elective contributions may not be distributed before, for plan years beginning after December 31, 1984, termination of the plan.

Section 1.401(k)-1(d)(3) of the regulations provides, in part, that a distribution may not be made under paragraph (d)(1)(iii) of this section if the employer establishes or maintains a successor plan. For purposes of this rule, the definition of the term "employer" is applied as of the date of plan termination, and a successor plan is any other defined contribution plan maintained by the same employer (other than a stock ownership plan defined in section 4975(e) or 409(a) or a simplified employee pension as defined in section 408(k) of the Code). However, if at all times during the 24-month period beginning 12 months before the termination, fewer than two percent of the employees who were eligible under the defined contribution plan that includes the cash or deferred arrangement as of the date of plan termination are eligible under the other defined contribution plan, the other plan is not a successor plan. A plan is a successor plan only if it exists at any time during the period beginning on the date of plan termination and ending 12 months after distribution of all assets from the terminated plan.

Section 1.401(k)-1(g)(6) of the regulations provides that the term "employer" means the employer within the meaning of section 1.410(b)-9.

Section 1.410(b)-9 of the regulations provides, in part, that "employer" means the employer maintaining the plan and those employers required to be aggregated with the employer under sections 414(b), (c), (m), or (o) of the Code.

Revenue Ruling 89-87, 1989-2 C.B. 81, provides that in order for a qualified plan to terminate, the date of termination must be established, the benefits of the plan participants and other liabilities under the plan must be determined as of the date of plan termination, and all assets must be distributed to satisfy those liabilities in accordance with the terms of the plan as soon as administratively feasible after the date of termination.

Employer A and Employer B signed Agreement C whereby Employer B agreed to provide personnel management services to Employer A. In addition, pursuant to the terms of Agreement C, Employer B also provided employee benefits under Plan Y to the

Group D Employees. Employer A terminated Plan X on June 1, , and has received a favorable determination letter on the termination of Plan X. Employer A did not adopt, and does not sponsor, maintain or make contributions to Plan X. Employer A may, but has yet to do so, direct Employer B to make a matching contribution to Plan X for the benefit of the Group Employees D participating in Plan Y. Employer A has not established another plan subsequent to the termination of Plan X.

Therefore, with respect to your ruling request, we conclude that Plan Y does not constitute a successor plan of Employer A for purposes of section 401(k)(10)(A)(i) of the Code, and that Employer A may cause Plan X to distribute the elective deferrals to the Group D Employees based upon the termination of Plan X.

This ruling is based on the assumption that Plan X is qualified under section 401(a) of the Code at the time of the proposed distributions.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code 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 the power of attorney on file with this office.

If you have any questions, please contact ****, T:EP:RA:T2 at ****.

Sincerely yours,

(signed) JOYCE E. FLOYD

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

Enclosures:
Deleted Copy of the Letter
Notice 437