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**Internal Revenue Service**

Department of the Treasury

Washington, DC 20224

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Contact Person:

Telephone Number: Id. No.
OP:E:EP:T:4

In Reference to:

Date: 11/29/1999

Att'n:

LEGEND:

Company A =

Company B =

Company C =

Company D =

Company E =

Partnership F =

Partnership G =

Partnership H =

Plan X =

State Y =

Dear :

This is in response to a ruling request dated submitted by your authorized representative, for rulings under section 409(l) of the Internal Revenue Code ("Code").

In support of your ruling request your authorized representative has presented the following facts:

Company A sponsors and maintains a defined contribution plan that includes an employee stock ownership feature as defined in section 4975(e)(7) of the Code ("Plan X"). The common stock of Company A is actively traded on the New York Stock Exchange.

195

Companies B, D and E are wholly owned subsidiaries of Company A. Company C is a wholly owned subsidiary of Company B.

Partnership F will engage in the activities of producing, advertising, marketing, circulating and distributing catalogs for Company A. Partnership F will be formed as a limited partnership under the laws of State Y. Company B will hold a general partnership interest in Partnership F and Company C will hold a limited partnership interest. Partnership F will be owned 100 percent in total by Companies B and C.

Partnership G will engage in the activities of a purchasing company for Company A with regard to non-inventory items. Partnership G will be formed as a limited partnership under the laws of State Y. Company A will hold a general partnership interest in Partnership G and Company D will hold a limited partnership interest. Partnership G will be owned 100 percent in total by Companies A and D.

Partnership H will engage in the activities of a logistics services company for Company A with regard to the distribution of inventory and non-inventory items. Partnership H will be formed as a limited partnership under the laws of State Y. Company A will hold a general partnership interest in Partnership H and Company E will hold a limited partnership interest. Partnership H will be owned 100 percent in total by Companies A and E.

Partnerships F, G, and H will elect for federal tax purposes to be classified as an association and thus a corporation pursuant to 301.7701-2(b)(2) of the Treasury Regulations (the "regulations").

Based on the aforementioned facts and representations, you have requested rulings that:

1) Partnerships F, G, and H will be treated as corporations for purposes of determining whether Partnerships F, G, and H, and Company A are members of the same "controlled group of corporations" for purposes of Section 409(l) of the Code and for purposes of Section 1563(a) of the Code to the extent incorporated by reference into Section 409(l).

2) Shares of common stock of Company A will constitute "employer securities" within the meaning of Code section 409(l) with respect to employees of Partnerships F, G, and H, and thus the employees of those entities may participate in Plan X.

Section 4975(e)(7) of the Code defines an ESOP as a defined contribution plan which is a stock bonus plan qualified under section 401(a), and which is designed to invest primarily in

qualifying employer securities. Section 4975(e)(8) defines the term "qualifying employer security" as any employer security within the meaning of 409(l).

Under section 409(l)(1) of the Code, the term "employer securities" means common stock issued by the employer (or member of the same controlled group) which is readily tradeable on an established securities market.

Section 409(l)(4) of the Code defines the term "controlled group of corporations" as having the same meaning as under section 1563(a) (determined without regard to subsections (a)(4) and (e)(3)(C) of section 1563).

Under section 1563 of the Code, one or more corporations will constitute a parent-subsidiary controlled group if stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock of each corporation is owned by one or more of the other corporations, and the common parent owns at least 80 percent of the total value of shares of all classes of the stock of at least one of the other corporations.

Section 301.7701-2(b)(2) of the regulations defines a corporation as an association as determined under section 301.7701-3. Section 301.7701-2(a) provides that for purposes of section 301.7701-2 and 301.7701-3, a business entity is an entity recognized for federal tax purposes that is not properly classified as a trust or otherwise subject to special treatment under the Code. Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under section 310.7701-2(b)(1) and 301.7701-2(b)(3) through (8), is an eligible entity, and can elect its classification for federal tax purposes. Partnerships F, G, and H are state law limited partnerships formed under the laws of State Y, and do not meet the definition of a corporation under section 301.7701-2(b)(1) and (3) through (8). Therefore, Partnerships F, G, and H may elect their classification pursuant to the rules of section 301.7701-3.

Section 301.7701-3(b)(1) of the regulations provides the rules for making a classification election for domestic eligible entities. That section provides that a domestic eligible entity with two or more owners must make an election if it desires to be classified as an association taxable as a corporation.

The rules regarding the timing of making an election are set forth in section 301.7701-3(c) of the regulations. They provide that a classification election is made on Form 8832. This

election must be filed within 75 days of the intended effective date of the election.

We conclude that, assuming Partnerships F, G, and H filed Form 8832 within the proper time frame, and that the form was properly completed, they will be classified as associations taxable as corporations for federal tax purposes. Company A and its wholly owned subsidiaries own one hundred percent of the ownership interest in Partnerships F, G, and H, therefore Partnerships F, G, and H will be considered members of a controlled group of corporations within the meaning of section 1563 of the Code. Company A stock satisfies the definition of employer securities under section 409(l)(1) since it is readily tradable on an established securities market. Accordingly Company A stock held by Plan X constitutes "employer securities" within the meaning of section 409(l) of the Code with respect to the employees of Partnership F, G, and H. Thus, the employees of Partnership F, G, and H may participate in Plan X.

Although Partnership F, G, and H are considered members of Company A's controlled group under section 409(l)(4) and 1563, no inference should be drawn regarding whether partnership interests can qualify as employer securities for purpose of other provisions of the Code, including section 409(l)(1) or 409(l)(2), nor whether a partnership classified as an association taxable as a corporation is treated as a corporation for purposes other than the one described in this letter ruling.

The above ruling is based on the assumption that Plan X is qualified under section 401(a), 409 and 4975(e)(7), and the related trust is tax exempt under section 501(a) of the Code at all relevant times.

In accordance with a power of attorney on file in this office, a copy of this ruling is being sent to your authorized representative.

Sincerely yours,

John G. Riddle, Jr.

John G. Riddle, Jr.
Chief, Employee Plans
Technical Branch 4

Enclosures:
Deleted copy of letter
Notice of Intention to Disclose

cc: