200019048

Internal Revenue Service

Department of the Treasury

Uniform Issue List: 401.29-02

Washington, DC 20224

Person to Contact:

Telephone Numbe

Refer Reply to: T:EP:RA:T4

Date: FEB 18 2000

LEGEND:

Company M =

Company N =

Company O =

Company P =

Plan X =

Plan Y =

Ladies and Gentlemen:

This is in response to a request for a private letter ruling dated October 2, 1998, as supplemented by additional correspondence dated May 13, 1999, and July 13, 1999, which was submitted on your behalf by you authorized representative. Your request concerns whether distributions from Plan X to certain former employees of a subsidiary of Company M are made on account of the employees' "separation from service" within the meaning of section 401(k)(2)(B)(i)(I) of the Internal Revenue Code("Code").

In support of the request, your authorized representative submitted the following facts and representations:

On August 1, 1997, Company N merged with Company O through the formation of a new holding company named Company M. Company M began operations on August 1, 1997 while Company N and Company O continue to exist after the merger as wholly owned subsidiaries of Company M.

As a result of the merger, it was decided that Company O would no longer perform its own data processing services and Company P would be engaged to provide data processing services for Company O or Company M. Company P expressed a

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desire to hire the employees who had performed data processing services at Company O to continue performing such services. However, no formal agreement was made. Instead, the data processing employees of Company O were terminated and were paid severance. A number of these employees (the "Group B employees") were then hired by Company P or one of its affiliates, and continued to perform services for Company O or Company M of basically the same type as they performed before their termination.

Prior to the merger, Company O sponsored Plan Y. Plan Y is intended to be qualified under Code sections 401(a) and 401(k), and received the latest determination letter on its qualified status on October 24, 1996. The Group B employees participated in this plan. Following the merger, Plan Y continues under Company M's sponsorship and under the name of Plan X.

Based on the above facts and representations, your authorized representative has requested a ruling that distributions from Plan X to Group B employees, which distributions include employee elective deferrals, will be considered as made upon a separation from service 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) of the Code 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(d)(4)(A)(iii) (formerly 402(e)(4)(A)(iii)) 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. This same rationale will apply to separation from service under section 401(k)(2)(B) of the Code. 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.

In the present case, the issue is whether the Group B employees incurred a separation from service on account of their discharge by Company O, a subsidiary of Company M. While there is no written agreement between Company O and Company P to hire the Group B employees, these employees were hired by Company P, or one of its affiliates, and they continued to perform substantially the same data processing

services for Company O or Company M as they performed before their termination. Thus, the Group B employees will be providing services associated with the ongoing activities of their former employer. Also, although there has been a change in supervisory personnel, all but two of the Group B employees continued to perform their data processing services on the premises of Company M.

Accordingly, we conclude that distributions from Plan X to Group B employees, which distributions include employee elective deferrals, will not be considered as made upon a separation from service within the meaning of section 401(k)(2)(B)(i)(I) of the Code.

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

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.

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

Sincerely yours,

John G. Riddle, Jr.

John G. Riddle, Jr., Manager
Employee Plans Technical Group 4

Enclosures:

Notice of Intention to Disclose
Deleted copy of the letter

cc:

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