Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Contact Person:

Telephone Number:

T:EP:RA:T4

In Reference to:

Date:

Attn:

JUN 12

LEGEND:

Company A =
Company B =
Company C =
State D =
State E =
State F =
Division G =

Division H =

Division I =

Plan X =

Agreement Y =

Dear

This is in response to a ruling request submitted on your behalf by your authorized representative in a letter dated and supplemented by additional correspondence dated concerning distributions from a plan described in section 401(k) of the Internal Revenue Code (the "Code").

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

Company A designs, orders from original equipment manufacturers, manufactures, sells, leases and services construction equipment, power systems, lift trucks and related equipment. Company A maintains Plan X, a profit sharing plan containing a cash or deferred arrangement within the meaning of

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section 401(k) of the Code. Plan X received its most recent favorable determination letter on .

Company A has business operations located in States D, E and F. Company A has historically treated Division G as separate and distinct from Divisions H and I. Division G serviced a separate and distinct market from that served by Divisions H and I and in that sense constituted an independently operated business.

Division G had its own separate work force, including management, production, and administrative employees. Division G maintained its own parts department and its own sales and service department. Division G's general manager had responsibility for Division G's performance and was the only employee of Division G that reported to one of Company A's corporate vice presidents in the corporate headquarters.

Division G personnel were solely responsible for the daily operations of the Division's three field offices, including decisions as to the hiring and firing of field personnel. Division G had separate production, sales, service and management facilities as well as a separate and distinct customer base. Division G was responsible for its own sales and service department marketing and advertising.

Division G had a separate budget, separate invoicing, and was shown separately on Company A's profit and loss statements. The assets and liabilities of Division G were separately identifiable. In most cases, Division G had separate contracts with its suppliers. In all cases, Company A maintained separate accounts with these suppliers, had separately identified "authorized territories", and reported separately to them.

Payroll, human resources, credit and accounting functions were centralized in the corporate headquarters, although the cost of those functions attributable to Division G were charged back to Division G in Company A's profit and loss statements. Division G initiated, coded and approved all of its own invoiced cost expenses. Division G was responsible for monitoring, reviewing, approving and processing all Division G sales commissions paid to and hours worked by Division G employees.

On Company A entered into Agreement Y with Company B, an unrelated corporation. Agreement Y provided for the sale of Division G (with the exception of real estate associated with one of the three field offices and certain retained assets) to Company B. The sale to Company B constituted a sale of more than eighty-five percent (85%) of the non-real estate assets used by Company A in its Division G, including without limitation, tangible personal property, intellectual

property, goodwill, leases, accounts receivable, franchises, approvals, permits, licenses, contracts, securities and certain other assets such as books, records, ledgers, files, documents, correspondence, customer lists and reports. Company A sold the real estate (subject to a lease to Company B) to an unrelated third party on . On Company A disposed of substantially all of the assets used in Division G. The assets retained by Company A pursuant to Agreement Y do not constitute assets used by Company A in Division G.

In connection with the sale, Company A terminated the Division G employees and substantially all of these employees were offered employment by Company B in the same jobs, at the same locations and at approximately the same wages. Company A continues to maintain Plan X, and there was no merger or transfer of assets between Plan X and any plan maintained by Company B.

In accordance with section 14.03(m) of Plan X, which permit lump sum distributions upon the sale or other disposition of substantially all the assets to an unrelated corporation, Company A desires to make lump sum distributions to employees who continue employment with the corporation acquiring such assets.

Your authorized representative further represents that Company A has continued to maintain Plan X after the sale of Division G and that Company A will make lump sum distributions from Plan X, subject to any applicable consent requirements, to the former employees on or before December 31, 2001.

Based on the foregoing facts and representations, you have requested the following rulings:

1) That Company A's sale of Division G to Company B, constituted a disposition of substantially all the assets used by it in a trade or business within the meaning of Code Section 401(k)(10)(A)(ii).

2) That distributions of Plan X account balances attributable to elective deferrals made by the former Division G employees employed by Company B will not violate the distribution restrictions set forth in Code Section 401(k)(2)(B)(i).

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)(II) of the Code, when read together with section 401(k)(10)(A)(ii), further provides that one of these distributable events is the disposition by a corporation of substantially all its assets (within the meaning of section 409(d)(2) used by the corporation in a trade or business of such corporation, but only with respect

to an employee who continues employment with the corporation acquiring such assets.

The event described in section 1.401(k)-1(d)(1)(iv) of the Regulations is the date of the sale or other disposition by a corporation of substantially all the assets (within the meaning of section 409(d)(2)) used by such corporation in a trade or business of such corporation to an unrelated corporation.

Section 1.401(k)-1(d)(4)(iv) states for purposes of section 1.401(k)-1(d)(1)(iv), the sale of "substantially all" the assets used in a trade or business means the sale of at least 85 percent of the assets.

Section 1.401(k)-1(d)(4) of the Regulations provides rules applicable to distributions upon the sale of assets. Section 1.401(k)-1(d)(4) provides, in relevant part, that (i) the seller must maintain the plan, and the purchaser may not maintain the plan after the disposition; (ii) the employee receiving the distribution must continue employment with the purchaser of the assets; (iii) the distribution must be in connection with the disposition of the assets and it must generally occur by the end of the second calendar year after the calendar year in which the disposition occurred; and (iv) the sale of substantially all the asset used in a trade or business means the sale of at least 85 percent of the assets, and an unrelated entity is one that is not required to be aggregated with the seller under sections 414(b), (c), (m), or (o) of the Code after the sale or other disposition.

Section 1.401(k)-1(d)(5) of the Regulations provides, in part, that distribution may be made only if it is a lump sum distribution within the meaning of section 402(d)(4) of the Code.

Section 1.401(k)-1(d)(6)(v) of the Regulations provides that a distribution may be made under section 1.401(k)-1(d) only if any consent or election required under section 411(a)(11) or 417 is obtained.

You have represented that Division G had a separate production, separate workforce, separate management facilities as well as a separate and distinct customer base and maintained separate accounts with manufacturers of product lines. You have further represented that Division G had a separate budget, separate invoicing and was shown separately on Company A's profit and loss statement. Based on all the facts and circumstances presented herein, Division G has been determined to be a trade or business of Company A within the meaning of section 401(k)(1)(A)(ii).

It has further been represented that Company A sold more than 85% of the assets of Division G to Company B. Substantially all employees of Division G were offered employment with Company B. Company A will maintain Plan X after the sale and distributions will be made in lump sums in connection with the sale.

Accordingly, with respect to ruling request one and two, we conclude that the sale of Division G by Company A constituted a disposition of substantially all of the assets used in a trade or business within the meaning of Code section 401(k)(10)(A)(ii) and that distributions of Plan X account balances attributable to elective deferrals made by the former Division G employees employed by Company B will not violate the distributions restrictions set forth in Code section 401(k)(2)(B)(i).

The above ruling is based on the assumption that Plan X is qualified under section 401(a) and 401(k) of the Code, and the related trust will be exempt under section 501(a) of the Code at the time of the transaction.

This ruling is also based on the assumption that any consent or election required under Code sections 411(a)(11) or 417 is obtained.

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

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.
Manager, Employee Plans
Technical Group 4
Tax Exempt and Government
Entities Division

Enclosures:
- Deleted copy of letter
- Notice of Intention to Disclose
- Copy of Letter to Authorized Representative

cc: