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Internal Revenue Service

Uniform Issue List No. 402.07-00

Department of the Treasury

Washington, DC 20224

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T:EP:T4

Contact Person:
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Telephone Number:
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In Reference to:
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Date:
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JUN 27 2000

Legend:

Corporation A = **********

Plan X = **********
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Dear **********:

This is in response to a ruling request submitted to this office on your behalf by your authorized representative by letter dated April 29, 1999, as supplemented by a letter dated November 15, 1999. You have requested a ruling under section 402(e)(4)(B) of the Internal Revenue Code ("Code"). The following facts and representations have been submitted in support of your ruling request.

You are employed by Corporation A, and you propose to retire and receive a distribution of your vested account balance under Plan X as soon as possible. You have been a participant in Plan X since 1985 and you are fully vested in your account balance under Plan X. You are not a participant in any other qualified plan maintained by Corporation A or related entities.

Your authorized representative asserts that Plan X is qualified under section 401(a) and the related trust is exempt from tax under 501(a) of the Internal Revenue Code ("Code"). A determination letter was issued to Plan X on October 2, 1995.

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Section 10.2 of Plan X provides, in part, that upon termination of service the terminated participant shall be entitled to receive an amount equal to the sum of (i) 100% of the participant's elective contributions subaccount, matching contribution subaccount, rollover contribution subaccount, and (ii) the participant's vested interest in his or her profit sharing subaccount and ESOP account.

Section 11.1 of Plan X provides that a participant can elect to receive his vested account balance under the plan in a single lump sum following termination of employment with Corporation A and related entities.

The employee stock ownership plan portion ("ESOP") of Plan X is designed to invest primarily in Employer Stock. Section 11.3 of Plan X provides that any portion of a participant's vested account balance which is invested in common stock of Corporation A ("Employer Stock") will be distributed in whole shares of Employer Stock with any fractional shares paid in cash. Your authorized representative indicates that Plan X has been treated as a single plan comprised of a profit sharing plan and an employee stock ownership plan in the determination letter, the summary annual report and the Form 5500 and asserts that this is evidence of the plan's sponsor's intention that Plan X also be treated as a single plan for purposes of applying section 402 of the Code.

Section 11.8 of Plan X provides that a participant can elect that all or a portion of his vested account balance under the plan be transferred to an eligible retirement plan (such as an IRA) in a direct rollover.

When a favorable ruling is issued, you will terminate employment with Corporation A and elect that (1) your vested account balance under the profit sharing portion of Plan X be transferred directly, in accordance with Section 11.8 of Plan X, to an IRA established for your benefit, and (2) the shares of Employer Stock that comprise your vested account balance under the ESOP portion of Plan X be transferred to your personal brokerage account. Both transfers will be made within the same taxable year.

Based on these facts and representations, your authorized representative requests the following ruling:

If your vested account balance under both the ESOP portion of Plan X and the profit sharing portion of Plan X are distributed following your termination of employment within a single taxable year, but the portion of the distribution comprised of assets other than Employer Stock is transferred to an IRA in a direct rollover, in accordance with section 401(a)(31) of the Code, and the portion of the distribution comprised of Employer Stock is paid to you directly, the aggregate

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distribution from both the ESOP portion of Plan X and profit sharing portion of Plan X will together constitute a lump sum distribution for purposes of section 402(e)(4)(B), which allows the net unrealized appreciation attributable to Employer Stock to be excluded from gross income if the Employer Stock is distributed as part of a lump sum distribution.

Section 402(a) of the Code provides that, except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the year in which distributed, under section 72 (relating to annuities).

Section 402(e)(4)(B) of the Code provides that, for purposes of subsection (a) and section 72, in the case of any lump sum distribution which includes securities of the employer corporation, there shall be excluded from gross income the net unrealized appreciation attributable to that part of the distribution which consists of securities of the employer corporation.

Section 402(e)(4)(C) of the Code provides that, for purposes of subparagraph (B), net unrealized appreciation and the resulting adjustments to basis shall be determined in accordance with regulations prescribed by the Secretary.

Section 402(e)(4)(D) of the Code provides that, for purposes of this paragraph, the term "lump sum distribution" means the distribution or payment within one taxable year of the recipient of the balance to the credit of an employee which becomes payable to the recipient (I) on account of the employee's death, (II) after the employee attains age 59 ½, (III) on account of the employee's separation from service, or (IV) after the employee has become disabled (within the meaning of section 72(m)(7)), from a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501.

Section 402(c)(4) of the Code provides that, for purposes of this subsection, the term "eligible rollover distribution" means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust; except that such term shall not include (A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made (i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or (ii) for a specified period of 10 years or more, (B) any distribution to the extent such distribution is required under section 401(a)(9), and (C) any hardship distribution described in section 401(k)(2)(B)(i)(IV).

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Section 402(c)(8)(B)(i) of the Code defines "eligible retirement plan" as (i) an individual retirement account described in section 408(a), (ii) an individual retirement annuity described in section 408(b) (other than an endowment contract), (iii) a retirement plan qualified under section 401(a) of the Code, and (iv) an annuity plan described in section 403(a).

Section 401(a)(31)(A) of the Code provides that if the distributee of any eligible rollover distribution (i) elects to have such distribution paid directly to an eligible retirement plan, and (ii) specifies the eligible retirement plan to which such distribution is to be paid (in such form and at such time as the plan administrator may prescribe), such distribution shall be made in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified.

Section 401(a)(31)(B) of the Code provides that subparagraph (A) shall apply only to the extent that the eligible rollover distribution would be includible in gross income if not transferred as provided in subparagraph (A) (determined without regard to section 402(c) and 403(a)(4)).

Section 401(a)(31)(C) of the Code provides that, for purposes of this paragraph, the term "eligible rollover distribution" has the meaning given such term by section 402(f)(2)(A). Section 402(f)(2)(A) provides that the term "eligible rollover distribution" has the same meaning as when used in subsection (c) of that section.

The term "eligible retirement plan" when used in section 401(a)(31) of the Code includes IRAs defined in sections 408(a) and 408(b) of the Code. Generally, a direct trustee-to-trustee transfer described in section 401(a)(31) of the Code constitutes a "direct rollover" of an "eligible rollover distribution" and is entitled to tax-deferred treatment pursuant to section 402(c) of the Code.

Section 1.401(a)(31)-1, Q&A 5, of the Income Tax Regulations ("regulations") provides that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is not currently includible in the distributee's gross income under section 402(c) of the Code and is exempt from the 20-percent withholding imposed under section 3405(c)(2).

Section 1.401(a)(31)-1 Q&A 14 of the Regulations provides, in pertinent part, that a direct rollover is a distribution and rollover of the eligible rollover distribution and is not a transfer of assets and liabilities.

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With respect to your ruling request, section 402(d)(4)(A) provides, in pertinent part, that the term "lump sum distribution" means the distribution or payment within one taxable year.

Plan X provides for the distribution to an employee of the balance to the credit in his or her account upon his or her separation from service, an event described in section 402(e)(4)(D) of the Code which can trigger a lump sum distribution. You intend to terminate employment with Corporation A and elect to have your vested account balance under the profit sharing portion of Plan X transferred directly to an IRA established for your benefit and have the shares of corporation A stock that comprise your vested account balance under the ESOP portion of Plan X transferred to your personal brokerage account. Both transfers will be made within the same taxable year.

Your distribution is a "lump sum distribution" as that term is used in Code section 402(e)(4)(D). Furthermore, neither the Code nor the regulations promulgated thereunder preclude a distribution from being treated as a lump sum distribution under Code section 402(e)(4)(D) for purposes of section 402(e)(4)(B) even if a portion of the distribution is either rolled over or directly transferred into an IRA.

Accordingly, we conclude as follows:

If your vested account balance under both the ESOP portion of Plan X and the profit sharing portion of Plan X are distributed following your termination of employment within a single taxable year, but the portion of the distribution comprised of assets other than Employer Stock is transferred to an IRA in a direct rollover, in accordance with section 401(a)(31) of the Code, and the portion of the distribution comprised of Employer Stock is paid to you directly, the aggregate distribution from both the ESOP portion of Plan X and profit sharing portion of Plan X will together constitute a lump sum distribution for purposes of section 402(e)(4)(B), which allows the net unrealized appreciation attributable to Employer Stock to be excluded from gross income if the Employer Stock is distributed as part of a lump sum distribution.

This ruling is based on the assumption that Plan X is qualified under section 401(a) of the Code and its related trust is tax-exempt under section 501(a) at all times relevant to these rulings. These rulings assume further that you will receive the balance to your credit under Plan X within one taxable year and that the distribution is made in accordance with the terms of the plan. This letter ruling assumes that your IRA, referenced above, meets the requirements of Code section 408(a).

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This letter 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.

The original and a deleted copy of this letter have been sent to your authorized representative in accordance with the instructions in a power of attorney on file with this office.

Sincerely yours,

John G. Riddle, Jr.

John G. Riddle, Jr., Manager
Employee Plans Technical Group 4
Tax Exempt & Government Entities Division

Enclosures:
Deleted copy of this letter
Notice of Intention to Disclose, Notice 437