200250036

INTERNAL REVENUE SERVICE

Uniform Issue List: 402.00-00

T:EP:RA:T2

SEP 20 2002

Attn:

LEGEND:

Taxpayer M:

Taxpayer N:

Plan X:

Dear

This is in response to the January 19, 2001 letter submitted by your authorized representative, as amended by correspondence dated December 12, 2001, in which you request a private latter ruling concerning section 402(e) of the Internal Revenue Code.

The following facts and representations have been submitted in connection with your request.

Taxpayer M is a holding company, with its primary, wholly-owned subsidiary being Taxpayer N. Taxpayer M established Plan X, an Employee Stock Ownership Plan (ESOP) effective as of July 12, 1994. Effective April 1, 2000, Plan X was amended to convert its money purchase pension plan component to a stock bonus plan. On April 26, 2000, the Internal Revenue Service issued a favorable determination letter for Plan X, as amended. Taxpayer M has no employees. All of the employees participating in Plan X are employed by Taxpayer N.

When Taxpayer M established Plan X in 1994, it structured the ESOP with two parts: one part as a leveraged

ESOP and one part as a non-leveraged stock bonus plan. The "leveraged" portion (Part A) is intended to be an employee stock ownership plan and the "unleveraged" portion (Part B) is intended to be a stock bonus plan. As originally adopted, Part A consisted of both a stock bonus plan component and a money purchase pension plan component; Part B consisted solely of a stock bonus plan component.

Taxpayer N adopted and makes contributions to Plan X. In addition, Taxpayer N established and currently maintains profit-sharing plans with qualified cash or deferred arrangements for the benefit of all employees participating under Plan X. Taxpayer N also adopted and currently maintains qualified defined benefit pension plans ("the pension plans") for the benefit of substantially all of the employees who are participants in Plan X.

Taxpayer M represents that Plan X holds "securities of the employer corporation" as defined in Code section 402(e)(4)(F).

Taxpayer M amended Plan X to remove the money purchase pension plan component from Part A and to convert that portion to a leveraged stock bonus plan. The attributes of the converted money purchase plan component benefits and corresponding limitations are preserved in Plan X as amended. This amendment, effective April 1, 2000, was reflected in the conformed copy of Plan X for which the Service issued its April 26, 2000 favorable determination letter.

Based on the above facts and representations, your representative has requested a ruling that for purposes of Code section 402(e)(4)(D)(ii), distributions made from Part A of Plan X will not be treated as distributions from a pension plan which must be aggregated by a participant with distributions from Taxpayer N's pension plans for purposes of determining whether the participant has a "lump sum distribution" under Code section 402(e)(4)(D).

Section 402(e)(4) of the Code permits the deferral of the taxation of net unrealized appreciation on employer securities received as part of a lump sum distribution. Pursuant to Code section 402(e)(4)(D), a lump sum

distribution is defined as the balance to the credit of the participant from the plan. For purposes of determining the balance to the participant's credit payable from a plan, it is necessary to aggregate certain plans. For this purpose, Code section 402(e)(4)(D)(ii)(I) provides that all profit-sharing plans of an employer are treated as a single plan, all stock bonus plans of the employer are treated as a single plan, and all pension plans of the employer are treated as a single plan. Because they are both pension plans, a money purchase pension plan and a defined benefit pension plan maintained by an employer must be combined for purposes of determining whether an employee has received the balance to his credit as a lump sum distribution.

The definition of lump sum distribution under Code section 402(e)(4)(D) requires that a distribution from a money purchase pension plan be aggregated with distributions from all pension plans. Based on this requirement, a participant who receives a single sum distribution from Part A of Plan X would also need to receive a single sum distribution from the pension plan maintained by Taxpayer N for the benefit of the participant in order to be treated as receiving a "lump sum distribution" under Code section 402(e)(4).

The amendment of Plan X converting the money purchase pension plan component of Part A of the Plan to a stock bonus plan has the effect of converting the distributions from Part A of the Plan to distributions from a stock bonus plan, even though it has been represented that the attributes of the converted benefits and corresponding limitations thereon will be preserved. Consequently, distributions from the pension plans should be disregarded for purposes of determining whether the distribution from Part A of Plan X constitutes a lump sum distribution.

Accordingly, we conclude, with respect to your ruling request, that for purposes of section 402(e)(4)(D)(ii) of the Code, distributions from Part A of Plan X will not be treated as distributions from a pension plan which must be aggregated by a participant with distributions from Taxpayer N's pension plans for purposes of determining whether the participant has a "lump sum distribution" under section 402(e)(4)(D) of the Code.

This ruling is based on the assumption that Plan X will be qualified under section 401(a) at all times relevant to the proposed transactions.

This letter 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 as precedent.

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative. Should you have any concerns regarding this letter, please contact **********, ID# ********, **********, at (***) ***-****.

Sincerely yours,

Alan C. Pipkin
Employee Plans Technical Group 4
Tax Exempt and Government
Entities Division

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose