Internal Revenue Service

Significant Index No. 401.29.02

Department of the Treasury

Washington, DC 20224

199905032

Person to Contact:

Telephone Number:

Refer Reply to: OP:E:EP:T:3

Date:

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LEGEND:

Company A =

Company B =

Employer C =

Plan X =

This is in response to your ruling request dated February 28, 1997, in which you request a private letter ruling concerning the application of section 401(k)(10) of the Internal Revenue Code to certain proposed distributions from Plan X.

The following facts and representations have been submitted:

Effective December 29, 1996, Company A sold substantially all of the assets of Company B, a wholly owned subsidiary of Company A, to Employer C. The activities of Company B constituted a separate trade or business within the controlled group of which Company A and Company B are a part. Employer C continues to operate the business formerly operated by Company B and has hired former Company B employees.

Employer C was established December 20, 1996, and is a limited partnership under state law. Employer C was formed, and the limited partnership agreement drafted, with the intent that the partnership would be treated as an association taxable as a corporation for federal income tax purposes. Employer C will file its federal income tax returns consistent with this tax treatment. Employer C has also filed a protective election pursuant to section 301.7701-3 of the Procedure and Administration Regulations to confirm its treatmment as a corporation, effective January 1, 1997.

Based on the foregoing facts, Company A requests the following ruling:

Assuming that Company A has sold substantially all of the assets of a separate trade or business to Employer C, the sale will be considered one made to a "corporation" for purposes of section 401(k)(10) of the Code such that distributions may be made pursuant to sections 401(k)(2)(B)(i)(II) and 401(k)(10) of the Code to those participants in Plan X who terminated employment with Company B and accepted employment with Employer C in connection with the sale.

Section 401(k)(2)(B) of the Code provides that distributions from a qualified cash or deferred arrangement may only be made upon the occurrence of specified events. Section 401(k)(2)(B)(i)(II) provides that distributions may be made upon the occurrence of any event described in section 401(k)(10).

Section 401(k)(10)(A)(ii) provides that distributions may be made from a qualified cash or deferred arrangement upon the "disposition by a corporation of substantially all of the assets (within the meaning of section 409(d)(2)) used by such 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." Section 401(k)(10)(B) and (C) of the Code further require that distributions must be "lump sum distributions" and that the transferor corporation must continue to maintain the plan after the disposition of these assets.

Section 301.7701-3(b)(3)(i) of the Procedure and Administration Regulations provides that an eligible entity in existence prior to January 1, 1997 will have the same classification that the entity claimed under old sections 301.7701-1 through 301.7701-3. Employer C was formed December 29, 1996, and claimed association status as of that date. Accordingly, Employer C will be treated as an association taxable as a corporation pursuant to section 301.7701-3(b)(3)(i), subject to applicaton of section 301.7701-3(f)(2), for federal tax purposes.

In view of the foregoing and the facts presented herein, we have determined that Employer C should be treated as a corporation for purposes of section 401(k)(10)(A)(ii). Therefore, assuming that Company A has sold substantially all of the assets of a separate trade or business to Employer C, it is concluded that the sale will be considered one made to a "corporation" for purposes of section 401(k)(10)(A)(ii) of the Code such that, distributions that otherwise meet the requirements of sections 401(k)(2)(B)(i)(II) and 401(k)(10) of the Code may be

made to those participants in Plan X who terminated employment with Company B and accepted employment with Employer C in connection with the sale.

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

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Chief, Employee Plans
Technical Branch 3

Enclosures:
Deleted copy of letter ruling
Form 437