Internal Revenue Service

Uniform Issue List: 401.00-00

Department of the Treasury

Washington, DC 20224

199917082

Person to Contact:

Telephone Number:

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

Date:
FEB - 3 1999

Att'n:

Legend:

Corporation A =

Subsidiary B =

Corporation C =

Unit D =

Territory E =

Plan X =

Dear

This is in response to your request for a ruling, dated October 1, 1998, submitted by your authorized representative concerning distributions from a plan described in section 401(k) of the Internal Revenue Code and qualified under section 401(a) of the Code.

Corporation A maintains Plan X, a profit-sharing plan which includes a cash or deferred arrangement ("CODA") as described in section 401(k) of the Code and provides for employer matching contributions, for the benefit of its employees and its affiliates' employees. You represent that Plan X is qualified under section 401(a) of the Code. Corporation A is a diversified news and information company which has operations in 44 states, the District of Columbia, and Territory E.

Subsidiary B, a wholly-owned subsidiary of Corporation A, owns approximately 86 daily community newspapers, including Unit D. Employees of Unit D participate in Plan X. Each of

Subsidiary B's daily newspapers has historically been operated as a separate business division and profit center from other properties of Subsidiary B. Each newspaper has its own separate management and separate nonmanagement employees, each maintains separate editorial autonomy, each is free to endorse policies, political candidates and positions independent of the others and of corporate headquarters. Each newspaper maintains separate personnel, printing, advertising, marketing, sales and distribution functions. Each of the newspapers has its own accounting and payroll systems.

On December 1, 1997, Unit D was sold to Corporation C, an unrelated corporation. The sale consisted of 100 percent of the assets of Unit D. As a result of the sale, all of the employees of Unit D were offered reemployment by Corporation C in the same jobs, at the same locations and at the same wages as in effect at Subsidiary B.

Plan X provides, generally, for the distribution of a participant's vested account balance under the Plan upon the sale by Corporation A, or a subsidiary, of substantially all of the assets used by such corporation in a trade or business of the corporation, to an unrelated corporation which does not maintain the Plan, but only with respect to a participant who continues employment with the corporation acquiring such assets. Plan X also provides that such distributions shall be made in the form of a lump sum to the affected participants no later than the end of the second calendar year after the calendar year in which the sale occurred. In accordance with this provision, Corporation A intends to make distributions to former employees of Unit D reemployed by Corporation C. Corporation A will continue to maintain Plan X after the sale. Corporation C will not maintain Plan X.

Based on the foregoing, you request a ruling that the sale by Subsidiary B of Unit D resulted in a disposition by Subsidiary B of substantially all the assets used by it in a trade or business within the meaning of section 401(k)(10)(A)(ii) of the Code, and, therefore, Plan X distributions to former employees will not adversely affect the tax treatment of salary deferrals under Plan X under section 402(e)(3) of the Code.

Section 402(e)(3) of the Code provides that contributions made by an employer on behalf of an employee to a trust which is a part of a qualified cash or deferred arrangement (as defined in section 401(k)(2)) shall not be treated as distributed or made available to the employee nor as contributions made to the trust by the employee merely because the arrangement includes provisions under which the employee has an election whether the contribution will be made to the trust or received by the employee in cash.

Section 401(k)(2)(B)(i)(II) of the Code, when read together with section 401(k)(10)(A)(ii) and section 1.401(k)-1(d)(1)(iv) of the Income Tax Regulations, states that amounts attributable to elective deferrals may not be distributed from a cash or deferred arrangement before the date of the sale or other 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 the corporation to an unrelated corporation, but only with respect to an employee who continues employment with the corporation acquiring such assets.

Section 1.401(k)-1(d)(1)(iv) of the regulations provides in relevant part, that amounts attributable to elective contributions are not distributable earlier than upon the date of the sale or other disposition by a corporation of substantially all of the assets (within the meaning of section 409(d)(2) used by the corporation in a trade or business of a corporation. Section 1.401(k)-1(d)(4)(iv) states that, 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.

You have represented that Unit D has been operated independently of Corporation A and its wholly-owned subsidiary, Subsidiary B. Unit D has its own management, and it maintains separate editorial, printing, advertising, marketing, sales, and distribution functions. Accordingly, based on all the facts presented, we conclude that Unit D constitutes a trade or business of Corporation A within the meaning of section 401(k)(10)(A)(ii) of the Code.

In this case, Subsidiary B sold to Corporation C 100 percent of Unit D's assets. You have represented that Corporation A has continued to maintain Plan X after the sale and that Corporation C will not maintain Plan X.

Accordingly, we conclude that the sale of Unit D by Subsidiary B, a wholly-owned subsidiary of Corporation A, resulted in a disposition by Subsidiary B of substantially all the assets used by it in a trade or business within the meaning of section 401(k)(10)(A)(ii) of the Code. Therefore, if the other applicable requirements set forth in section 1.401(k)-1(d)(4) are met, distributions to former employees reemployed by Corporation C will not adversely affect the tax treatment of salary deferrals under Plan X under section 402(e)(3) of the Code.

This ruling is based on the assumption that Plan X is qualified under section 401(a) of the Code at the time of the transaction.

A copy of this ruling has been sent to your authorized representative in accordance with a power of attorney on file in this office.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Chief, Employee Plans
Technical Branch 3

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

cc:

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