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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Uniform Issue List Numbers: 401.00-00, 401.29-00, 402.00-00

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ATTN: **********
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Legend:

Corporation A = **********
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Corporation B = **********
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Corporation C = **********
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Corporation D = **********
State E = ********
State F = **********
State G = *******
City H = **********
City I = **********
City J = **********
Plan = **********
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Ladies and Gentlemen:

This is in response to a letter dated April 27, 1998, as supplemented by additional correspondence dated December 22, 1998, and February 3, 1999, in which your authorized representative requested private letter rulings on your behalf under sections 401(k) and 402(e) of the Internal Revenue Code ("Code").

In support of your ruling requests you have provided the following statements and representations:

Corporation A is a State E corporation, with its principal offices in City J. Corporation B, a wholly-owned subsidiary of Corporation A, also is a State E corporation with its principal offices in City H. The principal business activity of Corporation B is holding the stock of seven wholly-owned subsidiary corporations, including Corporation C. Five of Corporation B's seven subsidiaries each own and operate one or more **********("Operating Unit(s)"). Corporation C owns one Operating Unit.

Corporation D is a business organization that is separate and unaffiliated from Corporation B. Corporation D owns and operates the same type of business as Corporations B and C, but in a different geographic location. Corporation D owns at least one such business.

Historically, each Operating Unit owned by Corporation B has been run separately. Each unit is a separate profit center, with a separate budget and a separate payroll. Each Operating Unit is geographically separate from the others, has its own property and assets, and is licensed separately by an appropriate agency of the federal government. Each Operating Unit is run by a separate vice president/general manager, does its own hiring and firing, and is responsible for its own personnel decisions. Each unit advertises separately and sells its services separately.

Prior to **********, Corporation C owned an Operating Unit in City H. Effective as of **********, Corporation C transferred all of its assets attributable to the City H unit plus a substantial amount of cash to Corporation D in exchange for the assets of Corporation D's Operating Unit located in City I. As a result of this transaction, employees of the

Operating Unit in City H became employees of Corporation D, which is not related to Corporation A, B, or C under §§ 414 (b), (c), or (m) of the Code.

Corporation B established, and has maintained a profit-sharing plan (the "Plan") for a number of years. The Plan contains a qualified cash or deferred arrangement under § 401(k) of the Code, and also provides for mandatory employer matching contributions under § 401(m) and discretionary employer profit-sharing contributions. The Plan has been determined by the Internal Revenue Service to be qualified under § 401(a) of the Code. Corporation C is a "Participating Employer" in the Plan, as are all the other wholly-owned Operating Unit subsidiaries of Corporation B.

As an independent business entity, Corporation D does not participate in the Plan or otherwise act as an employer whose employees accrued benefits under the Plan following the acquisition of assets from Corporation C. In addition, the Plan has not merged or consolidated with a plan maintained by Corporation D; and no Plan assets or liabilities have been transferred to a plan maintained by Corporation D. Former Corporation C employees who are now employed by Corporation D no longer actively participate in the Plan, although the vast majority of these former employees have account balances in the Plan.

The Plan provides that it may distribute the total value of a participant's account upon "the sale or other disposition by a Participating Company of substantially all of its assets used in a trade or business to another corporation, but only with respect to Participants who continue employment with the corporation acquiring such assets. . . ." The Plan now proposes to make distributions to former employees of Corporation C who continue to be employed by Corporation D (in Corporation C's former Operating Unit in City H) as a result of the disposition by Corporation C of the assets used in a trade or business. Such distributions would consist of the former employees' account balances in the Plan. The plan administrator of the Plan would offer each affected participant three options with regard to his or her account balance:

a. a lump sum distribution of all or part of his or her account balance, subject to applicable withholding requirements;

b. (following a distribution of the "total value" of a participant's accounts under the Plan Provision described above) a direct rollover of all or part of his/her account to a Corporation D qualified plan, or to an individual retirement arrangement qualified under section 408 of the Code; or

c. (for balances greater than $3,500), retention of amounts in the Plan until the Plan permits distributions under its terms.

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

1. That the like-kind exchange of the City H Operating Unit for the City I Operating Unit was a disposition of substantially all of the assets used by Corporation C in a trade or business within the meaning of sections 401(k)(10)(A)(ii) of the Code.

2. The proposed distributions by the Plan of the account balances in the Plan of former employees of Corporation C who are currently employed at Corporation D's Operating Unit in City H are in accordance with the requirements of § 401(k)(2)(B)(i) of the Code.

3. The proposed distributions by the Plan of the account balances in the Plan of former employees of Corporation C who are currently employed at the Corporation D Operating Unit in City H do not adversely affect the tax treatment of salary deferrals under the Plan under section 402(e)(3) of the Code.

Section 402(e)(3) of the Code provides that contributions 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 merely because the arrangement includes provisions under which an employee may elect whether contributions to the trust will be made to the trust or received in cash.

Section 401(k)(2)(B)(i) of the Code provides, in relevant part, that amounts attributable to employer contributions and made pursuant to an employee's election may not be distributed from a qualified cash or deferred arrangement earlier than an event described in § 401(k)(10).

Section 401(k)(2)(B)(i)(II) of the Code, when read together with section 401(k)(10)(A)(ii), provides that one of the events that may trigger such a distribution is the disposition by a corporation of substantially all of the assets used by such corporation in the operation of a trade or business. However, such a distribution may be made only with respect to an employee who continues employment with the trade or business acquiring such assets.

Section 401(k)(10)(B) of the Code generally provides that an event shall not be described in subparagraph § 401(k)(10)}(A) with respect to any employee unless that employee receives a lump sum distribution (as defined in § 402(d)(4)) by reason of the event.

Section 1.401(k)-1(d)(1)(iv) of the federal Income Tax Regulations provides, in relevant part, that amounts attributable to elective deferrals may not be distributed from a cash or deferred arrangement before the date of a sale or other disposition by a corporation of substantially all its assets used in a trade or business to an unrelated entity or individual. Section 1.401(k)-1(d)(4)(iv)(B) of the Regulations states that, for purposes of section 1.401-1(d)(1)(iv), the sale or disposition of "substantially all" the assets used in a trade or business means the sale or disposition of at least 85% of the assets.

In this case, you have represented that Corporation C disposed of all of its assets used in a trade or business by transferring its Operating Unit in City H to Corporation D, an unrelated corporation that continued to employ former employees of Corporation C.

Based on these representations it is ruled that:

1. The disposition by Corporation C of all the assets used by it in the operation of a trade or business--*i.e.*, the City H Operating Unit--constitutes a disposition of assets within the meaning of section 401(k)(10)(A)(ii) of the Code.

2. The proposed distributions by the Plan of the account balances of former Corporation C employees who continue to be employed at Corporation D's Operating Unit in City H satisfy the special requirements for distributions from a qualified cash or deferred arrangement and are in accordance with the requirements of § 401(k)(2)(B)(i)(II) of the Code.

3. The proposed distributions by the Plan of the account balances in the Plan of former employees of Corporation C who are currently employed at the Corporation D Operating Unit in City H do not adversely affect the tax treatment of salary deferrals under the Plan under section 402(e)(3) of the Code.

This ruling is based on the assumption that Plan X is qualified under §§ 401(a) and 401(k) of the Code at all times pertinent to this ruling request. However, this ruling expresses no opinion as to whether the Plan, as described herein, satisfies the requirements for qualification under §§ 401(a) and 401(k). The determination as to whether a plan is qualified under section 401(a) is within the jurisdiction of the appropriate Key District Office of the Internal Revenue Service.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office. Should you have any questions regarding this ruling, your contact in this office is **********, ID number ********, telephone number **********. Your contact should be directed to Employee Plans Technical Branch 1, OP:E:EP:T:1.

Sincerely,

(Signed) John Swieca

John Swieca
Chief, Employee Plans
Technical Branch 1