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Internal Revenue Service

Department of the Treasury

Uniform Issue List 401.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

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

Date:
APR 16 1999

Attention:

Legend:

Company A =

Company B =

Program C =

Administration D =

Plan X =

Dear

This is in response to a request for a ruling submitted by your authorized representative dated July 17, 1998, concerning the ability of Plan X to make or commence distributions to former participants. The request was supplemented by letters dated September 22, 1998, November 12, 1998, December 4, 1998, and February 15, 1999.

Company A established Plan X, effective September 1, 1972. Plan X is qualified under section 401(a) and 401(k) of the Internal Revenue Code. Company A maintains Plan X for the benefit of its employees and employees of its subsidiaries.

Company A is an insurance and financial services holding company that operates various business through its operating subsidiaries. One of Company A's subsidiaries, Company B, performed claim processing services for Program C. Company B served as fiscal intermediary and carrier between Administration D (Program C's financing arm) and health care providers such as hospitals, nursing homes, home health agencies and physicians under contracts with Administration D ("Administration D contract"). Company B had a business unit of approximately 1,700 employees (the "Program C Employees") who provided services pursuant

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to this Administration D contract. Company B was one of several unrelated contractors providing services for Administration D under Program C.

In July 1996, Company A publicly announced its decision not to renew its contract with Administration D and to exit from the Program C business. Company A's Administration D contract contained a provision which stated as follows: "If this contract is terminated or non-renewed, Company A agrees to use its best efforts to accomplish an orderly transition of its responsibilities and transfer its Program C operations to a successor contractor." As part of the operations transition, Company A made Program C Employees available for job interviews with the successor contractors. In many locations across the country, the successor contractors hired Program C Employees to continue administering Program C business on behalf of Administration D. Approximately 500 of the Program C Employees received offers of continued employment with successor contractors.

There was no liquidation, merger, transfer of corporate assets or other similar corporate transaction associated with the discharge of Program C employees. The successor employers were under no obligation to Company A or Administration D to hire Program C employees. Company A and Company B have no ownership interest in any of the successor employers that have hired Program C employees, nor were any Program C employees who were discharged from Company A hired by successor employers providing services to Company A.

Based on the foregoing, you request a ruling that distributions from Plan X may be made to Program C Employees who are now employed by a successor contractor on the grounds that a separation from service has occurred within the meaning of Code Section 401(k)(2)(B)(i)(I).

Section 401(k)(2)(B)(i) of the Code provides, in relevant part, that distributions from a qualified cash or deferred arrangement may not be made earlier than the occurrence of certain stated events. Section 401(k)(2)(B)(i)(I) further provides that one of these distributable events is "separation from service".

Revenue Ruling 79-336, 1979-2 C.B. 187 provides that an employee will be considered separated from service within the meaning of section 402(e)(4)(A) of the Code only upon the employee's death, retirement, resignation, or discharge, and not when the employee continues on the same job for a different employer as a result of the liquidation, merger, or consolidation, etc. of the former employer (i.e. the same desk rule). Revenue Ruling 80-129, 1980-1 C.B. 86 extended this rationale to situations where an employee of a partnership or corporation, the business of which is terminated, continues on the same job for a successor employer formed to continue the business.

In this case, the issue is whether the same desk rule should be applied to the employees of Company B who are discharged by Company A and employed by successor companies. The successor employers were not obligated to Company A or Administration D to hire the respective Program C Employees. There is no liquidation, merger, transfer of corporate assets or other similar corporate transaction associated with the discharge of these employees. The successor employers are not related to Company A or Company B. In addition, Company B

employees represented no more than a portion of employees providing services for Administration D under Program C. Thus, the same desk rule should not be applied here.

Accordingly, based on the facts presented, we conclude, with respect to your ruling request that Company B's former employees who worked for Administration D, and who were employed by successor employers, will be considered to be made on account of the employees' separation from service within the meaning of Code Section 401(k)(2)(B)(i)(I).

The above ruling is based on the assumption that Plan X will be otherwise qualified under sections 401(a) and 401(k) of the Code, and the related trust will be tax exempt under section 501(a) at the time that the above transaction takes place.

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

Sincerely yours,

Frances V. Sloan
Chief, Employee Plans
Technical Branch 3

Enclosures:
Deleted copy of letter
Notice of Intention to Disclose
Copy of letter to your authorized representative

CC: