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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 20 2012

T:EP:RA:T2

Uniform Issue List: 402.09-00

Employer A: XXXXXX

Taxpayer M: XXXXXX

Plan X : XXXXXX

Plan Y: XXXXXX

Dear XXXXX:

This is response to the May 24, 2011 letter submitted by your authorized representative, as supplemented by correspondence dated June 6, 2011, December 20, 2011, and May 23, 2012, in which you request a private letter ruling concerning the application of section 402(e) of the Internal Revenue Code (the "Code").

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

Employer A maintains Plan X (which is an Employee Stock Ownership Plan as defined under section 4975(e)(7) of the Code), and Plan Y, a profit sharing plan. Both Plan X and Plan Y are qualified under section 401(a) of the Code. Taxpayer M, as an employee of Employer A, participates in both Plan X and Plan Y.

Article 8 of Plan X contains the following provisions:

Section 8-1 provides for the distribution of balances credited to a participant's account by payment in a lump sum subject to the provisions of Article 8

Section 8-4(a) provides the balances credited to a participant's Other Investment Accounts shall be distributed as soon as practicable after he or she terminates employment with Employer A.

Section 8-5 contains a diversification option in accordance with section 401(a)(28) of the Code, which allows a participant who has attained age 55 and who has completed at least 10 years of participation in Plan X is given the election to withdraw an amount equal to a portion of the value of the Employer A

stock credited to his or her plan accounts. Plan X further provides that any amount withdrawn under section 8-5 is not treated as a distribution subject to Article 8 of Plan X.

Plan X states that it is an ESOP within the meaning of section 4975(e)(7) of the Code, which is a stock bonus plan which is qualified under section 401(a) of the Code.

Prior to separating from service from Employer A, Taxpayer M elected on two occasions to receive distributions from Plan X pursuant to the diversification provisions under section 8-5 of Plan X. No subsequent distributions have been made to Taxpayer M from Plan X or Plan Y. Taxpayer M separated from service from Employer A in 2011. As provided for under the terms of Plan X, Taxpayer M will be receiving employer securities as part of a distribution from Plan X of his entire account balance in 2012 ("the 2012 distribution"). Taxpayer M has not received any distributions from Plan Y and will not receiving any distributions from Plan Y in 2012.

Based upon the above facts and representations, your representative has requested a ruling that for the purposes of section 402(e)(4) of the Code, Taxpayer M's distribution of his entire account balance from Plan X shall constitute a "lump-sum distribution," such that Taxpayer M can defer recognition of the appreciation of the securities of Employer A in accordance with Code section 402(e)(4)(B). Additionally, your representative has requested a ruling that Plan X and Plan Y are not required to be treated as a single plan for the purposes of section 402(e)(4)(D)(ii)(1) of the Code.

Section 402(e)(4)(B) of the Code provides in pertinent part that for the purposes of section 402(a), in the case of any lump sum distribution which includes securities of the employer corporation, there shall be excluded from gross income the net unrealized appreciation attributable to that part of the distribution which consists of securities of the employer corporation.

Section 402(e)(4)(D)(i) of the Code, provides that for purposes of section 402(e)(4)(B) a lump sum distribution means the distribution or payment within one taxable year of the recipient the balance to the credit of the participant which becomes payable to the recipient (I) on account of the employee's death, (II) after the employee attains age 59 ½, (III) on account of the employee's separation from service, or (IV) after the employee has become disabled (within the meaning of Code section 72(m)(7)).

Section 402(e)(4)(D)(ii) of the Code requires that for the purposes of determining the balance to the participant's credit payable from a plan, it is necessary to aggregate certain plans. Section 402(e)(4)(D)(ii)(I) of the Code states that all trusts which are part of a plan shall be treated as a single trust, 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.

Section 4975(e)(7) of the Code provides, in pertinent part, that the term employee stock ownership plan means "a defined contribution plan" which is a stock bonus plan which is qualified, or a stock bonus plan and a money purchase plan both of which are qualified under section 401(a).

Plan X is a stock bonus plan. Since Plan Y is a profit sharing plan, it is not required to be aggregated with Plan X under section 402(e)(4)(D)(ii)(I) of the Code. Accordingly, Taxpayer M's account balance in Plan Y does not have to be included in determining whether the 2012 distribution constitutes the balance to the credit of Taxpayer M for purpose of applying section 402 (e)(4)(D)(i) of the Code. In addition, since the 2012 distribution is payable on account of Taxpayer M's separation from service the previous diversification withdrawals are also not taken into account for purposes of determining the balance to the credit under section 402(e)(4)(D)(i).

Accordingly, we conclude that the 2012 distribution will constitute a lump-sum distribution under section 402(e)(4)(D) of the Code. Consequently, Taxpayer M may exclude from gross income the net unrealized appreciation on employer securities as provided for in section 402(e)(4)(B).

This ruling letter is based upon the assumption that Plan X and Plan Y are qualified under section 401(a) of the Code, and that Plan X meets the requirements of section 4975(e)(7), and that their related trusts are tax exempt under section 501(a) at all relevant times.

If you have any questions concerning this ruling, please contact ***, ID Number **********, SE:T:EP:RA:T2 at (202) ***-****.

Sincerely,

Jason Levine
Acting for
Donnie Littlejohn

Donzell H. Littlejohn, Manager
Employee Plans Technical Group 2

Enclosures:
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