Internal Revenue Service

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Department of the Treasury
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Washington, DC 20224

Contact Person.

Telephone Number:

In Reference to: T:EP:RA:T4

Date: DEC 1 5 1999

Legend:

Company A
Company B
Company C
Company D
Company E
Company F
Company G
Plan X
Plan Y
Plan Z

Dear

This is in response to a request for a ruling submitted by your authorized representative on February 10, 1999 and suppiemented by additionai correspondence dated April 23, 1999, May 7, 1999, July 23, 1999, September 2, 1999 and September 9. i 999 concerning distributions from plans described in section 40 I (k) of the Intemai Revenue Code ("Code") and qualified under section 401(a) of the Code. Your authorized representative submitted the following facts and representations in support of the requested ruling.

Company A's primary business is ownership and management of various heaith care faciiities through various affiliates, including corporate subsidiaries, joint ventures, and iimited liabiiity companies. Company A maintains Pians X, Y, and Z ("401(k) Plans"), each of which includes a cash or deferred arrangement as described in section 40 1(k) of the Code for the benefit of its employees, including the employees of its various affiliates.

Company B and Company D are wholly-owned subsidiaries of Company A which are in the business of owning and managing hospitals in a specific geographical area. Company B owned and managed three hospitals, the assets and liabilities of which were contributed to Company C. Company D owned and managed one hospital and its assets

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and iiabiiities were contributed to Company E. Company C and Company E are singie member limited liability companies, the sole member of each of which is a directly or indirectly wholly-owned subsidiary of Company A. Also, Company F is a wholly-owned subsidiary of Company A.

As part of an interrelated transaction, it is represented that more than eighty-five percent (85%) of the assets constituting hospitals of Company B and Company D were sold to Company G. Company G is not affiliated with Company A within the meaning of sections 414(b), (c), (m), and (o) of the Code.

The transaction involved the contribution by Company B of assets and liabilities related to three hospitals to Company C (a related corporation). Similarly, Company D contributed assets and liabilities related to one hospital to Company E (a related corporation). Company B and Company D then contributed Company C and Company E to Company F (a related holding company). On September 1, 1998, Company C and Company E sold the assets and liabilities related to the hospitals to Company G.

With the exception of certain officers, including the CEO, CFO, Chief Nursing Officer (CNO) and COO, all of the employees who worked for the sold hospitals ceased to be employed by Company B or Company D. The employees were offered jobs with the purchaser, Company G. These individuals, in virtuaiiy ail cases, continued to perform the same service after the sale as they performed before the sale.

Each of the hospitals sold in the transaction had its own Medicare license. Each hospital had its own CEO and CFO. Each hospitai had its own accounting staff. The accounting staff prepared the generai ledger for the hospital. Each hospital collected its own receivables. Hiring and tiring of employees was performed at the hospital. Employees were never transferred between hospitais. Company A through its corporate headquarters provided centralized functions including payroii, information services, legal, insurance, accounting and governmental reimbursement (Medicare/Medicaid).

In addition to accounting, various other functions were performed at both the hospitai ievei and at Company A. These functions included marketing and purchasing. For example, Company A might run a commerciai on teievision nationwide. However, each hospital would separateiy pay for biiiboards in its geographical area. Most suppiies were purchased through contracts entered into by headquarters for all of its subsidiaries. However some supplies were purchased by each hospital. The computer system of each hospitai "tied in" to the computer system of Company A. Contracting was done both at the hospital level, and at higher levels within the organization.

it is represented that at the close oi the saie, substantiaiiy aii of the affected empioyees became employed by the purchaser, Company G. Such employees continued to do the same work, at the same hospitai and in substantially the same manner as prior to the saie. Company A wiii continue to sponsor the 401(k) Plans. To the extent that distributions are permissibie, oniy lump-sum distributions shaii be made. The

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distributions shall be made prior to the end of the second calendar year following the year in which the respective sales occurred.

Based on the foregoing, Company A requests a ruling that the transaction constitutes a distributable event under section 401(k)(10)(A)(ii), the sale of a trade or business exception, such that the employees employed by the hospitals sold are eligible to receive distributions of their entire account balances from the Company A 401(k) Plans.

Section 401(k)(2)(B) of the Code provides that a cash or deferred arrangement is not qualified unless amounts attributable to elective deferrals may not be distributed earlier than (I) separation from service, death, or disabiiity, (II) an event described in section 401(k)(10), (III) in the case of a profit-sharing or stock bonus plan, the attainment of age 591/2, or (IV) in the case of contributions to a profit-sharing or stock bonus plan to which section 402(e)(3) applies, upon hardship of the employee.

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, permits amounts attributable to elective deferrals to be distributed from a cash or deferred arrangement after 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)(4)(iv) states that for purposes of section 1.401(k)-l(dj(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.

Section 1.401(k)-1(d)(4) of the regulations provides additional rules applicable to distributions upon the sale of assets. This section provides, in pertinent part, that the seller must continue to maintain the plan after the disposition of assets. This requirement is satisfied if an only if the purchaser does not maintain the plan after the disposition. Further, this section provides that the employee must continue employment with the purchaser of the assets, and the distributions must be made in connection with the disposition of assets, and must generaiiy occur by the end of the second calendar year after the calendar year in which the disposition occurred.

Section 1.401(k)-1(d)(5) of the regulations provides, in pertinent part, that a distribution described above must be made in the form of a lump sum distribution within the meaning of section 402(d)(4) of the Code.

Even though some of the business activities oieach of the hospitais was performed at Company A, each hospital, based on the facts and circumstances, performed sufficient business activities at the hospital ievei to be characterized as a stand-aione business. Further, it is not uncommon for a hospital to be organized as a separate trade or business that is a viabie business entity. As such. we conclude that each hospital

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constituted a trade or business of Company B and Company D within the meaning of section 40 l(k)(1 0)(A)(ii) of the Code.

In this case, it is represented that Company B and Company D through a series of interrelated transactions with their affiliates sold at least 85% of the assets constituting hospitals to Company G. All of the employees of the hospitals sold were offered reemployment by Company G. Company A will maintain the 40 I (kj Pians after the sale and the distributions will be made in lump sums in connection with the sale.

Accordingly, we conclude that the transaction between Company B and Company D and their affiliates and Company G resulted in a sale of substantially all the assets of Company B and Company D used by Company B and Company D in a trade or business within the meaning of section 40 l (k)(10)(A)(ii) of the Code, and therefore, if the other applicable requirements set forth in section 1.401(k)-1(d)(4) are met, employees formeriy empioyed by the hospitais owned by Company B and Company D who, as a result of the sale, are employed by Company G are eligible to receive distributions of their entire account balances from the Company A 401(k) Pians.

The above ruling is based on the assumption that the 401(k) Pians wiii be otherwise quaiified under sections 401(a) and 401(k) of the Code, and the related trusts wiii be tax exempt under section 501(a) at the time that the above transaction takes piace

This ruling is directed oniy to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that this private ietter ruiing may not be used or cited by others as precedent.

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

Sincereiy Yours,

John G Riddie, Jr., Manager
Enipioyee Pians iechnicai Group 4
Tax Exempt and Government Entities Division

Enclosures:
Deieted Copy of Letter
Notice of Intention to Disclose
Copy of Letter to Authorized Representative

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