

200420036



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

FEB 17 2004

UIL: 402.08-01

ATTN: *****

LEGEND:

- Company A: *****
- Company B: *****
- State R: *****
- Company C: *****
- Company D: *****
- Plan X: *****

Dear *****:

This is in response to your request for a ruling dated April 30, 2002, which was supplemented by correspondence dated April 14, 2003, July 21, 2003 and September 16, 2003, submitted on your behalf by your authorized representative concerning the proposed distribution of assets from Plan X under section 402(c) of the Internal Revenue Code ("Code"). Your ruling request was revised in correspondence dated December 11, 2003, which was submitted to the Service under a letter dated January 16, 2004.

The following facts and representations have been submitted in support of your ruling request.

Company A is a privately held corporation in the telecommunications business located in State R. Company A is a wholly owned subsidiary of Company B, a State R corporation and the holding company of Company A.

Company A sponsors Plan X. Plan X, an employee stock ownership plan (ESOP), was established effective January 1, 1982. Plan X is a non-contributory, defined contribution plan that covers all non-union employees of Company B and its affiliates, Company A and Company D, who have completed one year of service and attained age 19. Plan X was most recently amended and restated in February 2002, and received a favorable determination letter dated December 16, 2002.

In 1995, Plan X bought 14,534 shares (the "ESOP shares") of Company B stock at approximately \$210 per share. To finance a portion of the purchase, Plan X borrowed \$2 million and pledged as collateral 9,609 of the ESOP shares. The loan was intended to meet the requirements of section 54.4975-7(b)(8) of the Income Tax Regulations. The ESOP shares were placed in a suspense account in accordance with section 54.4975-7(b) of the regulations to be released from the suspense account and allocated to participants in Plan X as the ESOP loan was paid down.

On September 29, 1999, Company B merged with Company C and in connection therewith the trustees of Plan X exchanged all of the shares of Company B stock held by Plan X for cash consideration ("cash assets") and an interest in an escrow fund pending resolution of certain matters as set forth in a certain escrow agreement. The full payment of the assets held in the escrow fund cannot be completely distributed until 2006. The cash consideration attributable to shares of Company B stock held in the suspense account was applied to repay the ESOP loan and the balance of the cash remains in the suspense account to be allocated among participants in Plan X as of the date of the merger.

Therefore, Plan X now holds two assets: cash, which for purposes of this ruling is referred to as "cash assets" and a 48.2 percent stake in the escrow fund.

Company B and Company C desire to terminate Plan X and make a complete distribution of all of the assets held in Plan X. However, the termination of Plan X was delayed pending final resolution of certain plan defects under the Voluntary Compliance Resolution Program. As these matters are in the final stages of resolution, the trustees of Plan X are now in a position to terminate Plan X and make distributions to the Plan X participants.

A complete distribution of the cash from the escrow fund cannot be made to the participants of Plan X until 2006. Therefore, because Company B and Company C desire to terminate Plan X as soon as possible, Company B and Company C propose to distribute certificates to Plan X participants which gives each participant an ownership right in the escrow fund. Plan X will distribute to each eligible participant his or her interest in the cash assets held in Plan X.

Based on the foregoing, the following ruling is requested:

The distribution to each Plan X participant who elects to receive a single sum payment of such participant's entire Plan X account balance in the form of the escrow certificates representing his or her interest in the escrow fund and the cash assets will constitute an "eligible rollover distribution" within the meaning of Code section 402(c)(4) that is eligible for tax-deferred rollover treatment as described in Code section 402(c)(1).

Code section 402(a)(1) provides, in general, that any amount actually distributed to any distributee by any employees' trust described in Code section 401(a) which is exempt from tax under Code section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 (relating to annuities).

Code section 402(c)(1) provides the rules applicable to rollovers from qualified trusts. Code section 402(c)(1) provides, generally, that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be included in gross income for the taxable year in which paid.

Code section 402(c)(2) provides, in general, that in the case of any eligible rollover distribution, the maximum amount transferred under paragraph (1) shall not exceed the portion of such distribution, which is includible in gross income (determined without regard to paragraph (1)).

Code section 402(c)(3) provides that section 402(c)(1) shall not apply to any transfer of a distribution made after the 60th day following the day such distributee received the property distributed.

Code section 402(c)(4) defines "eligible rollover distribution" as any distribution to an employee of all or a portion of the balance to the credit of an employee in a qualified trust; except that the term shall not include --

- (A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made --
 - (i) for the life (or life expectancies or the joint life expectancies) of the employee and the employee's designated beneficiary, or
 - (ii) for a specified period of 10 years or more,

(B) any distribution to the extent such distribution is required under section 401(a)(9), and

(C) any distribution which is made upon the hardship of the employee.

Code section 402(c)(8)(B) defines "eligible retirement plan" as

- (i) an individual retirement account described in section 408(a),
- (ii) an individual retirement annuity described in section 408(b) (other than an endowment contract),
- (iii) a qualified trust,
- (iv) an annuity plan described in section 403(a),
- (v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and
- (vi) an annuity contract described in Code section 403(b).

In this case, the trustees of Plan X propose to make a distribution of the balance to the credit of each participant who elects to receive a single sum distribution upon the termination of Plan X. The balance to the credit of participants in Plan X consists of (1) a certificate representing each participant's ownership right in the escrow fund and (2) cash (from the cash assets). Thus, each participant who elects to receive a single sum distribution under these facts will receive a distribution that constitutes their entire account balance in Plan X and such distribution is eligible for favorable rollover treatment.

Accordingly, with respect to your ruling request, we conclude that the distribution to each participant in Plan X who elects to receive a single sum payment of such participant's entire Plan X account balance in the combination of (1) the certificate representing his or her interest in the escrow fund and (2) his or her interest in the cash assets will constitute an "eligible rollover distribution" within the meaning of Code section 402(c)(4) that is eligible for tax-deferred rollover treatment as described in Code section 402(c)(1).

This ruling is based on the assumption that Plan X meets the requirements for qualification under Code section 401(a) at the time of the proposed distributions.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or the regulations that may be applicable hereto.

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This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited by others as precedent.

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

If you have any questions concerning this ruling, please contact *****
SE:T:EP:RA:T:2, *****.

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

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