

200436015



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

JUN - 9 2004

Uniform Issue List:404.00-00

Attention:

Legend:

Company A =

Company B =

Company C =

Company D =

Company E =

Plan X =

Plan Y =

Plan Z =

Dear

This is in response to your request for a private letter ruling, submitted by your authorized representative by letter dated April 28, 2003, concerning the deductibility of contributions under section 404 of the Internal Revenue Code (the "Code"). A letter dated August 22, 2003 supplemented the request.

Your representative has submitted the following facts and representations:

Company A is a C corporation. Company B owns all of the issued and outstanding shares of Company A's stock.

Page 2

Company C is a C corporation. Company B owns all of the issued and outstanding shares of Company C's stock. Its only business activity is the holding of Company D and it has no employees.

Company B is a limited partnership. Its only business activity is the holding of its 100% interests in Company A and Company C and it has no employees.

Company D is a C corporation. percent () of its issued and outstanding shares are owned by Company C and the remaining of its issued and outstanding shares are owned by Company A.

Company B will form a new holding company (Company E) as a C Corporation. Company B will transfer to Company E of the shares of stock in Company A and of the shares of stock in Company C. The result will be that (i) Company B will own of the issued and outstanding shares of stock of Company E, (ii) Company E will own of the issued and outstanding shares of stock of both Company A and Company C, (iii) Company A will own of the issued an outstanding shares of stock of Company D, and (iv) Company C will own of the issued and outstanding shares of stock of Company D. In effect, Company E, all of the stock of which will be owed by Company B, will own directly or indirectly of the equity interest in Company A, Company C and Company D.

Company A and Company D have jointly maintained two employee benefit plans, Plan X, a non-contributory money purchase pension plan and Plan Y, a profit sharing plan with a cash or deferred arrangement within the meaning of section 401(k) of the Code. Plan X and Plan Y are qualified under section 401(a) of the Code.

Both Plans cover substantially all of the employees of Company A and Company D. The eligibility requirements of both Plans are the same so that if an employee is a participant in one plan, said employee is also a participant in the other Plan. The Plan Year for both Plans is the calendar year.

Company A and Company D have contributed to Plan X since sum equal to or more of the eligible compensation of all participants. Company A and Company D have also established the practice of making matching contributions to Plan Y in an amount equal to of the participants' elective salary deferrals up to of their base compensation. Company A and Company D propose to make similar contributions in

Upon the incorporation of Company E, and the corporate restructuring described above, Company E will adopt Plan Z, an Employee Stock Ownership Plan ("ESOP") as defined in section 4975(e)(7) of the Code. All shares of stock held by Plan Z will be shares of Company E that will be "qualifying employer securities", as described in section 4975(e)(8) and "employer securities" as described in section 409(1). Company A and Company D will adopt Plan Z as participating employers. Company C has no employees and, accordingly, will not adopt Plan Z. The Plan Z plan year will be the calendar year. You represent that Plan Z meets the requirements of sections 401(a) and 4975(e)(7) and its related trust is exempt from tax under Code Section 501(a). All the above described corporations are members of a controlled group corporations as described in section 414(b).

Plan Z will enter into a leveraged ESOP transaction pursuant to which Company A will obtain third party financing. Company A will, in turn, lend the loan proceeds to the ESOP Trust (the "ESOP Loan") for the purpose of enabling it to purchase "employer securities" for

the benefit of its participants. An independent appraisal of such employer securities as required by section 401(a)(28)(C) of the Code will be obtained. You represent that the transaction will qualify for an exemption from being a prohibited transaction under section 4975(c) by virtue of satisfying the requirements of section 4975(d)(3) and sections 54.4975-7 and 54.4975-11 of the Excise Tax Regulations (the "regulations"). Company A and Company D will make contributions to Plan Z to pay the principal and interest on the ESOP loan.

Based on the foregoing, you request the following rulings:

1. Company A and Company D's proposed contributions to Plan X in an amount equal to _____ of participants' compensation will be deductible under section 404(a)(3) and subject to the limits therein.
2. Company A and Company D's proposed contributions to Plan Y in an amount equal to the maximum elective salary deferrals permitted by section 402(g) of the Code, subject to section 404(n), and a _____ matching contribution up to _____ of participants' compensation will be deductible under section 404(a)(3) of the Code.
3. Company A and Company D's proposed contributions to Plan Z of an amount up to _____ of participants' compensation to pay on the principal of the ESOP Loan, and payment of such amount as is required to pay interest on the ESOP Loan, will be deductible under section 404(a)(9)(A) of the Code and under section 404(a)(9)(B) respectively.

In a telephone conversation with a member of my staff on April 28, 2004, you withdrew your fourth ruling request.

Section 404(a) of the Code sets forth the rules governing the deductibility of employer contributions to qualified plans. Section 404(a)(3)(A) provides rules generally applicable to the deductibility of contributions to stock bonus and profit-sharing plans.

Section 404(a)(3)(A)(i) of the Code generally provides, in pertinent part, that, in the taxable year when paid, if contributions are paid into a stock bonus or profit-sharing trust, and if such taxable year ends within or with a taxable year of the trust with respect to which the trust is exempt under section 501(a), deductions are limited to an amount not in excess of 25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under the stock bonus or profit-sharing plan.

Section 404(a)(3)(A)(iv) of the Code further provides that if the contributions are made to two or more stock bonus or profit-sharing trusts, such trusts shall be considered a single trust for purposes of applying the limitations of this subparagraph.

Section 404(a)(3)(A)(v) of the Code provides that a defined contribution plan subject to the funding standards of section 412 shall be treated in the same manner as a stock bonus plan or a profit sharing plan for purposes of this subparagraph.

Section 404(a)(6) of the Code also provides that, for purposes of paragraphs (1), (2), and (3), a taxpayer shall be deemed to have made a payment on the last day of the preceding taxable year if the payment is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

Section 404(a)(9) of the Code sets forth special deduction rules applicable to contributions to an ESOP described in section 4975(e)(7) that are used by the ESOP to repay the principal and interest on a loan incurred for the purpose of acquiring qualifying employer securities (as described in section 4975(e)(8)), hereafter referred to as "leveraged ESOP."

Section 404(a)(9)(A) of the Code, provides in pertinent part, that, notwithstanding the provisions of paragraphs (3) and (7), if contributions are paid into a trust which forms a part of an employee stock ownership plan (as described in section 4795(e)(7)), and such contributions are, on or before the time prescribed in paragraph (6), applied by the plan to the repayment of the principal of a loan incurred for the purpose of acquiring qualifying employer securities (as described in section 4975(e)(8)), such contributions shall be deductible under this paragraph for the taxable year determined under paragraph (6). The amount deductible under this paragraph shall not, however, exceed 25 percent of the compensation otherwise paid or accrued during the taxable year to the employees under such employee stock ownership plan.

Section 404(a)(9)(B) provides that notwithstanding the provisions of paragraphs (3) and (7), if contributions are made to an employee stock ownership plan (described in subparagraph (A)) and such contributions are applied to the plan to the repayment of interest on a loan incurred for the purpose of acquiring qualifying employer securities (as described in subparagraph (A)), such contributions shall be deductible for the taxable year with respect to which such contributions are made as determined under paragraph (6).

Section 404(j) of the Code also sets forth an overall ceiling on the total amounts which may be deducted under section 404(a) for any taxable year. Section 404(j)(1), in pertinent part, provides that in computing the amount of any deduction allowable under paragraph (1), (2), (3), (4), (7) or (9), of subsection (a) for any year, in the case of a defined contribution plan, the amount of any contributions otherwise taken into account shall be reduced by any annual additions in excess of the limitation under section 415 for that year.

Section 415(c)(6)(B) of the Code provides that if no more than one-third of the employer contributions to an employee stock ownership plan (as described in section 4975(e)(7) for a year which are deductible under paragraph 9 of section 404(a) are allocated to highly compensated employees (within the meaning of section 414(q), the limitations imposed by this section shall not apply to - (A) forfeitures of employer securities (within the meaning of section 409(1) under such ESOP if such securities were acquired with the proceeds of a loan as described in section 404(A)(9)(A), or (B) employer contributions to such an employee stock ownership plan which are deductible under section 404(a)(9)(B).

Section 404(n) of the Code provides that elective deferrals (as defined in section 402(g)(3)) shall not be subject to any limitation contained in paragraph (3), (7), or (9) of subsection (a), and such elective deferral shall not be taken into account in applying any such limitation to any other contribution.

Sections 611(b)(1) and 632(a)(1) of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") amended section 415(c)(1) for taxable years beginning after December 31, 2001, so that the maximum annual addition to the account of a participant in a defined contribution plan is the lesser of \$40,000 or 100% of the participant's compensation. The effect of this change is that the section 404(j) limit on deductions under section 404 is now the lesser of \$40,000 or 100% of the participant's compensation.

With respect to your requested rulings, Section 404(a)(3) of the Code allows a deduction for contributions paid to a money purchase plan, profit sharing plan and stock bonus plan up to a 25 percent limit. We note that Company A and Company D's proposed contributions to Plan X, together with their proposed matching contributions to Plan Y are less than percent of participants' compensation.

Section 404(a)(9)(A) allows a separate deduction for contributions applied by an ESOP to the repayment of the principal of a loan incurred for the purpose of acquiring "qualifying employer securities", subject to a 25 percent limit. Section 404(a)(9)(B) allows for a deduction for contributions applied by an ESOP to repayment of interest on such a loan. For purposes of applying section 404 to other contributions, elective deferrals are not taken into account and pursuant to section 404(n), the limitations of section 404(a)(3) 404(a)(7) or 404(a)(9) do not apply to the elective deferrals.

Accordingly, we conclude with respect to your ruling requests:

1. Company A and Company D's proposed contributions to Plan X of an amount equal to of participants' compensation will be deductible under section 404(a)(3) of the Code and subject to the limits therein.
2. Company A and Company D's proposed contributions to Plan Y of an amount equal to the maximum elective salary deferrals permitted by section 402(q) of the Code, subject to section 404(n), and a matching contribution up to , of participants' compensation will be deductible under section 404(a)(3) of the Code.
3. Company A and Company D's proposed contributions to Plan Z of an amount up to - , of participants' compensation to pay on the principal of the ESOP Loan, and payment of such amount as is required to pay interest on the ESOP Loan, will be deductible under section 404(a)(9)(A) of the Code and under section 404(a)(9)(B), respectively.

These rulings are based on the assumption that the proposed contributions would otherwise not exceed the overall limitations of section 415 of the Code.

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 regulations, which may be applicable thereto.

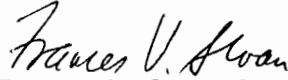
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

200436015

Page 6

If you wish to inquire about this ruling, please contact ***** (ID **-****) at (***)
-**. Please address all correspondence to SE:T: EP:RA:T3.

Sincerely yours,



Frances V. Sloan, Manager,
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

CC: