



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201442067

APR 29 2014

Uniform Issue List: 664.00-00

SEIT:EP:RA:T2

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Legend:

Company C = XXXXX

Taxpayer A = XXXXX

Taxpayer B = XXXXX

Plan X = XXXXX

Trust T = XXXXX

Dear XXXXX:

This is in response to the request for a ruling dated March 27, 2012, as supplemented by letters dated September 20, 2012, and May 2, 2013, in which you, through your authorized representative, request a letter ruling on the application of section 664(g) of the Internal Revenue Code (the "Code"). The following facts and representations support your ruling request.

Company C, formed by Taxpayer A in 1962, established Plan X in 1978. Plan X is an employee stock ownership plan ("ESOP"), as defined in section 4975(e)(7) of the Code. The Plan received its most recent favorable determination letter on September 17, 2011.

In 1987, Taxpayer A established Trust T, a charitable remainder trust as described in section 664(d)(1) of the Code, for the benefit of his spouse, Taxpayer B. Trust T provided for payment of shares of Company C stock to Taxpayer B as an income beneficiary, during her life, with the remainder to be transferred to Plan X upon her death. In a Private Letter Ruling issued by the Internal Revenue Service (the "Service") to Company C, it was determined that Trust T met the requirements of section 664(d)(1).

Upon Taxpayer A's death in 1988, shares of Company C stock passed from the estate of Taxpayer A to Trust T. As required under the terms of Trust T, shares of Company C stock held

in the Trust were transferred to Plan X upon Taxpayer B's death in 2010 (the "Transfer") and held in a suspense account ("CRT Suspense Account"), as described in section 646(g)(3)(E) and provided for in Section 7.19 of Plan X. You represent that, at all relevant times, Plan X contained provisions meeting the requirements of sections 664(g)(3)(A) - (F).

As required under section 664(g)(2)(B) of the Code, at the time of the Transfer, Taxpayer A and members of the Taxpayer A's family (within the meaning of Code section 2032A(e)(2)) owned (directly or through the application of section 318(a)) no more than 10 percent of the value of the stock of Company C.

As required under section 664(g)(2)(C) of the Code, immediately after the Transfer, Plan X owned (after the application of section 318(a)(4)) at least 60 percent of the value of the outstanding Company C stock.

On November 9, 2009, Company C filed with the Service a verified written statement consenting to the application of sections 4978 and 4979A of the Code as described in section 664(g)(1)(E) of the Code.

Section 7.19 of Article VII of Plan X provides that for each plan year, the number of shares allocated from the CRT Suspense Account to eligible participants have a fair market value equal to the lesser of (i) 25 percent of the participant's 415 compensation for such plan year, or (ii) \$30,000, as adjusted for increases in the cost of living in accordance with section 664(g)(7)(B) of the Code.

You propose to amend section 7.19 by adding section 1.04(A) to Plan X. This amendment provides that for each plan year, the total amount of shares allocated from the CRT Suspense Account will be determined by the Board of Directors of Company C in a written resolution based upon the fair market value of the shares. Amended Section 7.19 further provides that the annual release formula from the CRT Suspense Account must be at least equal to the greater of 7.5 percent of the aggregate of all eligible Plan X participants' compensation for the plan year as determined under Code section 415, or the amount needed so that on a rolling five-year basis (including the current plan year and the prior four plan years), the average annual allocation from the CRT Suspense Account is at least 10 percent of the aggregate eligible Plan participants' compensation. However, the amount released each year, as determined by the Board of Directors, will be limited by the application of section 664(g)(7) of the Code.

In a Private Letter Ruling issued by the Service to Company C, the Service concluded that for purposes of sections 664(g)(3)(A) and (E), and 664(g)(7) of the Code, allocations of stock from the CRT Suspense Account, required by section 664(g)(3)(E) of the Code, will be valued at the fair market value of the stock at the time the stock is allocated from the CRT Suspense Account to the accounts of affected Plan X participants.

Based upon the above facts and representations, you, through your authorized representative, request a ruling that the above referenced proposed amendment satisfies the requirements of section 664(g) of the Code.

Section 4975(e)(7) of the Code provides that an ESOP is a defined contribution plan which is (A) a stock bonus plan which is qualified, or a stock bonus plan and a money purchase plan, both of which are qualified under Code section 401(a), and which are designed to invest primarily in qualifying employer securities; and (B) which is otherwise defined in regulations prescribed by the Secretary.

Section 4975(e)(7) of the Code further provides in relevant part that an ESOP must meet the requirements of section 664(g) (if applicable).

Section 664(g) of the Code, enacted in 1997, provides the rules governing qualified gratuitous transfers of qualified employer securities to an ESOP, as defined in section 4975(e)(7). Section 664(g)(1)(A) of the Code provides that such a transfer only applies to securities which had previously passed from a decedent dying before January 1, 1999, to a trust described in paragraph (1) or (2) of subsection (d).

Section 664(g)(2)(A) of the Code further provides that the transferee ESOP must have been in existence on August 1, 1996.

Section 664(g)(1)(E) of the Code provides that the employer whose employees are covered by the plan described in section 664(g) must file with the Secretary a verified written statement consenting to the application of sections 4978 and 4979A with respect to such employer.

Sections 664(g)(2)(B) and (C) of the Code provides that at the time of the transfer, the decedent and members of the decedent's family (within the meaning of section 2032A(e)(2)) own (directly or through the application of section 318(a)) no more than 10 percent of the value of the employer and immediately after the transfer, such plan owns (after the application of section 318(a)(4)) at least 60 percent of the value of the stock of the corporation.

Sections 664(g)(3)(A) – (F) of the Code provide that a plan complies with Code section 664(g) only if it provides that allocations of the transferred stock are consistent with section 401(a)(4), participants have voting rights with regard to that stock, an independent trustee votes the shares that are not allocated, such shares are subject to section 409(h), such shares, in general, are held in a suspense account and are allocated in the manner so described, and upon plan termination any unallocated shares are to be transferred to or for the use of an organization described in section 170(c).

More specifically, section 664(g)(3)(E) of the Code provides that a plan complies with section 664(g) if it provides that such securities are held in a suspense account under the plan to be allocated each year, up to the applicable limitation under paragraph (7), after first allocating all other annual additions for the limitation year, up to the limitations under section 415(c) and (e).

Section 664(g)(7)(A) of the Code provides that, for the purposes of paragraph (3)(E), the applicable limitation under this paragraph with respect to a participant is an amount equal to the lesser of, (i) \$30,000, or (ii) 25 percent of the participant's compensation (as defined in section 415(c)(3)). Section 664(g)(7)(B) provides that this limitation amount shall be adjusted in the same manner as under section 415(d).

Section 664(g) of the Code, as enacted in 1997, is directed to transaction(s) between a plan established prior to August 1, 1996, Charitable Remainder Trust containing securities that were passed to it by a decedent dying before January 1, 1999. The Transfer between Plan X and Trust T met these requirements.

Additionally, the Transfer transaction meets the ownership requirements of sections 664(g)(2)(B) and (C) of the Code. Company C meets the special filing requirements of section 664(g)(1)(E).

Plan X provides all the particular plan provisions that are required under section 664(g) as part of the transaction. In light of the narrow application of the section 664(g) requirements, it is not unreasonable to treat the allocation amount set forth in sections 664(g)(3)(E) and (7) as the maximum amount that may be allocated, rather than the amount required to be allocated. As a result of this determination, we also have concluded that, to ensure the yearly release of shares from the CRT Suspense Account, it is reasonable for Plan X to have a provision that establishes a minimum amount that must be released from the suspense account every plan year, such as the one proposed by Company C.

Accordingly, with respect to your ruling request, we conclude that amendments to sections 1.04A and 7.19 of Plan X, as described above, are consistent with section 664(g) of the Code. However, the specific language of those amendments will need to be approved as part of the Service's Determination Letter process.

This letter assumes that Plan X is otherwise qualified under section 401(a) of the Code and its related trust is exempt from tax under section 501(a).

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.

If you have any questions regarding this letter, please contact XXXXX, at (XXX) XXX-XXXX. Please reference SE:T:EP:RA:T2.

Sincerely yours,

  
Jason E. Levine  
Employee Plans, Technical Group 2

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Enclosures:

Deleted copy of letter ruling  
Notice of Intention to Disclose

cc:

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