



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201124030

SE:T:EP:RA:T2

Uniform Issue List: 409.01-09

MAR 22 2011

Legend:

Company A = ***

LLC B = ***

Plan X = ***

Dear ***:

This is in response to a request for a private letter ruling, dated February 4, 2010, revised by letters dated September 21, 2010 and March 9, 2011, submitted on your behalf by your authorized representative, concerning the applicability of section 409(l) of the Internal Revenue Code (the Code) to an employee stock ownership plan (ESOP). Your authorized representative submitted the following facts and representations in support of the request.

Company A is a domestic S corporation and is the sole member of LLC B. Company A has established Plan X, an ESOP within the meaning of Code section 4975(e)(7). The assets of Plan X will consist primarily of shares of Company A's stock. Company A represents that it has a single class of common stock with a combination of voting power and dividend rights that is the greatest of any class of common stock of any member of Company A's controlled group.

LLC B did not make an election under section 301.7701-3(a) of the Treasury Regulations (Regulations) to be taxed as a corporation.

Based on the above facts and representations, your authorized representative has requested a ruling that the common stock of Company A will not fail to satisfy the definition of "employer securities" as that term is defined under Code section 409(l) with respect to employees of LLC B.

Code section 4975(e)(7) provides in pertinent part that an employee stock ownership plan must be designed to invest primarily in "qualifying employer securities," which is defined in section 4975(e)(8) as any employer security within the meaning of section 409(l).

Code section 409(l)(1) defines the term "employer securities" as common stock issued by the employer (or by a corporation that is a member of the same controlled group) which is readily tradable on an established securities market.

Code section 409(l)(2) provides that if there is no common stock which meets the requirements of paragraph (1), the term "employer securities" means common stock issued by the employer (or by a corporation which is a member of the same controlled group) having a combination of voting power and dividend rights equal to or in excess of—

(A) that class of common stock of the employer (or of any other such corporation) having the greatest voting power, and

(B) that class of common stock of the employer (or of any other such corporation) having the greatest dividend rights.

Section 301.7701-2(a) of the Regulations provides that for purposes of this section and section 301.7701-3, a business entity is any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under section 301.7701-3) that is not properly classified as a trust under section 301.7701-4 or otherwise subject to special treatment under the Code. A business entity with only one owner is classified as a corporation or is disregarded; if the entity is disregarded, its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner.

Section 301.7701-3(a) of the Regulations provides that a business entity that has a single owner and that is not classified as a corporation under section 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect to be classified for federal tax purposes as an association (and thus a corporation under section 301.7701-2(b)(2)) or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(1) of the Regulations provides that unless the entity elects otherwise, a domestic eligible entity is—

(i) A partnership if it has two or more members; or

(ii) Disregarded as an entity separate from its owner if it has a single owner.

Company A is the sole member of LLC B. LLC B has not made an election under section 301.7701-3(a) of the Regulations to be taxed as a corporation. Therefore, LLC B will be classified by default under section 301.7701-3(b)(1)(ii) as a disregarded entity for federal income tax purposes. Under section

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301.7701-2(a), LLC B will be regarded as a division of Company A, with LLC B's assets and liabilities attributed to Company A. Because LLC B will be regarded as a division of Company A, the stock of Company A ("Stock A") will be treated as stock issued by the employer with respect to the employees of LLC B for purposes of section 409(l).

Accordingly, based on your representation that Stock A otherwise meets the requirements of section 409(l)(2), we conclude that the common stock of Company A will not fail to satisfy the definition of "employer securities" as that term is defined under Code section 409(l) with respect to the employees of LLC B.

This ruling letter is based on the assumption that Plan X is otherwise qualified under Code sections 401(a) and 4975(e)(7) at all relevant times.

This ruling 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 by others as precedent.

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

If you wish to inquire about this ruling, please contact ***. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Donzell Littlejohn, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc. ***