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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

S.I.N.: 401.29-00 and 402.00-00

Contact Person:

Telephone Number:

In Reference to:

OP:E:EP:T:2

Date:

DEC 03 1999

Legend:
Institute A =
Company K =
Company L =
Company M =
Plan X =

Dear :

This is in response to a ruling request dated August 10, 1999, as supplemented by a letter dated October 19, 1999, submitted by your authorized representative, regarding the federal income tax consequences of proposed distributions from Plan X. Your authorized representative submitted the following facts and representations:

In 1985, Company K, a subsidiary of Company L, acquired a medical diagnostic and contract research business from an unrelated company. The contract research business was transferred to Company M, an affiliate of Company K. Company L is the parent company of Company M.

Company L sponsors Plan X, a qualified plan under section 401(a) of the Internal Revenue Code with a cash or deferred arrangement described in section 401(k) of the Code. Company M is a participating employer in Plan X.

Company M has two facilities. At one facility, Company M has acted as a contractor and operated, on behalf of Institute A, an agency of the United States Government, Institute A's basic research program. This facility at Institute A is entirely owned by the United States Government. At its other facility, Company M conducts commercial business.

Company M's contract between itself and Institute A has expired, effective October 11, 1999. Institute A has informed Company M that the contract will not be renewed. Effective with the end of the contract, Company M's employees at Institute A's facility will be terminated by Company M. Although not legally obligated to, Institute A intends to offer employment to nearly all of Company M's employees at Institute A's facility effective upon termination by Company M.

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Prior to the termination of the contract, employees of Company M at Institute A's facility met with representatives of Institute A to discuss the impact of the termination of the Company M contract. Institute A representatives informed the employees that they would each receive an offer of employment and would be treated as "new employees" if hired by Institute A with respect to their past service with Company M, as it related to vacations and retirement benefits.

No assets from Plan X will be transferred to Institute A. The thrift savings plan offered to all federal employees does not accept either a plan to plan transfer of assets or the direct rollover of funds from individual employees.

There will be no ongoing relationship between Company M and Institute A subsequent to the discharge of the Company M employees and there will be no liquidation, merger, transfer of corporate assets or similar corporate transactions associated with the discharge of the Company M employees between Company M and Institute A.

Based on the foregoing facts and representations, you request a ruling that the termination of employment of the Company M employees at the Institute A facility on October 11, 1999, and their subsequent reemployment by Institute A results in a separation from service from Company M thereby allowing the terminated employees of Company M to receive a distribution from Plan X pursuant to section 401(k)(2)(B)(i)(I) of the Code.

Section 402(d)(4)(A) of the Code, in relevant part, defines a lump sum distribution as a distribution or payment from a qualified employees' trust within one taxable year of the recipient of the balance to the credit of an employee which becomes payable to the recipient on account of one of a stated event, including "separation of service."

Section 401(k)(2)(B)(i) of the Code provides, in relevant part, that distributions from a qualified cash or deferred arrangement may not be made earlier than the occurrence of certain stated events. Section 401(k)(2)(B)(i)(I) further provides that one of these distributable events is "separation from service."

Revenue Ruling 79-336, 1979-2 C.B. 187, provides that an employee will be considered separated from service within the meaning of section 402(d)(4)(A)(iii) of the Code (formerly 402(e)(4)(A) of the Code) only upon the employee's death, retirement, resignation, or discharge, and not when the employee continues on the same job for a different employer as a result of the liquidation, merger, or consolidation, etc. of the former employer (i.e. the "Same Desk Rule"). Revenue Ruling 80-129, 1908-1 C.B. 86 extended this rationale to situations where an employee of a partnership or corporation, the business of which is terminated, continues on the same job for

a successor employer formed to continue the business.

The issue is whether the Same Desk Rule should be applied to the employees who are discharged from Company M and reemployed by Institute A. In this case, there is no liquidation, merger, transfer of corporate assets or other similar corporate transaction associated with the discharge of those employees. Also, Company M is not related to Institute A and there will be no ongoing relationship between Company M and Institute A subsequent to the discharge of the employees. Thus, the Same Desk Rule should not be applied to this factual situation.

Therefore, based on the facts presented, we conclude that the termination of employment of the Company M employees at the Institute A facility on October 11, 1999, and their subsequent reemployment by Institute A results in a separation from service from Company M thereby allowing the terminated employees of Company M to receive a distribution from Plan X pursuant to section 401(k)(2)(B)(i)(I) of the Code.

This ruling is based on the assumption that Plan X is qualified under sections 401(a) and 401(k) of the Code, and the related trust will be tax exempt under section 501(a) at the time of the transaction.

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

Sincerely yours,

Joyce E. Floyd

Joyce E. Floyd
Chief, Employee Plans
Technical Branch 2

Enclosures:
Deleted Copy of this Letter
Notice of Intention to Disclose

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