Internal Revenue Service

SIN: 4975.04-02

Department of the Treasury

Washington, DC 20224

Contact Person:

Telephone Number:

In Reference to: OP:E:EP:T:2

Dale: NOV 16

Legend:

Taxpayer A =

Plan B =

Plan C =

Company D =

Company E =

Company F =

Company G =

Dear :

This is in response to a letter of December 15, 1997, as supplemented by letters dated May 4, 1998, February 2, 1999, and May 4, 1999 submitted by your authorized representative, in which a ruling was requested on your behalf regarding the federal income tax consequences of the transaction set out below.

Your authorized representative submitted the following facts and representations:

Taxpayer A is engaged in compression and other gas handling services in the oilfield services industry. It specializes in the handling of gases for maximizing the recovery of hydrocarbon resources. Taxpayer A maintains Plans B and C. Plan C is a profit sharing plan that meets the requirement:: of §401(a) and its trust is exempt from federal income taxes under §501(a).

Plan B, which is a stock bonus plan that includes an employee stock ownership plan, was effective as of October 1,

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1988. Plan B meets the requirements of §§401(a), 409, and 4975(e)(7) as to its form and operation and Plan A's trust is exempt from federal income taxes under §501(a). Effective July 7, 1989, Plan B initially borrowed $2.9 million to purchase shares of Company D's common stock at $1.00 par value ("First Plan Loan"). At that time and at all relevant times up to the effective time of the merger of Company D with a wholly-owned acquisition subsidiary of Company E (the "Merger"), Company D owned all of the issued and outstanding capital stock of Company A. Plan B made periodic payments of principal and interest due under the First Plan Loan which was ultimately paid in full on September 30, 1994. Approximately 358,000 shares of Company D's common stock were purchased by Plan B and allocated to participants' accounts incident to Plan B's amortization of the amounts due under the First Plan Loan.

As of August 1, 1993, Plan B borrowed from Company D approximately $3.5 million to purchase additional shares of Company D's common stock in 1993 and also in 1394 ("the Second Plan Loan"). The Second Plan Loan is an exempt loan as described in §4975(d)(3) and the regulations issued thereunder. The loan provides for quarterly installments of principal and interest commencing on December 31, 1993 with the last quarterly installment being due on September 30, 2000. Substantial and recurring contributions have been made by Taxpayer A to Plan B during the term of the Second Plan Loan resulting in reduction of the principal amount due under the Second Plan Loan more rapidly than is required under the amortization schedule for such loan. As of September 30, 1997, approximately $2.2 million in principal payments had been made under the Second Plan Loan leaving a principal balance of $1.3 million.

At this time, Taxpayer A's business unit parent is Company E. Effective July 13, 1997, as a result of the Merger, Company D became a second-tier subsidiary of Company E. Under the merger agreement relating to this transaction (the "Merger Agreement"), shares of Company E common stock (plus additional consideration) were exchanged for shares of Conpany D's common stock. One consequence of such merger was that shares of Company D's common stock held by Plan B were exchanged for shares of Company E's common stock (plus additional consideration).

In August of 1998, all of the issued and outstanding capital stock of Company E was acquired by Company F, a wholly-owned subsidiary of Company G, in exchange for shares of Company G common stock, $.01 par value. All shares of Company E stock held by Plan B were exchanged for shares of Company G Common Stock. At least initially, Company G has determined to operate Company E and its downstream controlled group, including Taxpayer A, as separate entities rather than as divisions or in some other configuration.

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Under the Merger Agreement, Company E agreed to provide Company D's employees, Taxpayer A and their affiliates with employee benefit plans no less favorable in the aggregate than those employee benefit plans provided to such employees as of the date of the Merger Agreement, February 27, 1997. The Merger Agreement expressly provides that Company E shall have no obligation to make (or cause Taxpayer A to make) contributions to Plan B.

Company E currently sponsors and maintains for eligible nonrepresented employees (i) a qualified thrift plan which, in addition to other participant investment direction options, offers a company stock fund that invests primarily in Company G common stock and (ii) a qualified defined benefit plan. Additionally, Company E maintains a single-employer collectively bargained qualified thrift plan (with terms and provisions that are substantially similar to the terms and provisions of Company E's qualified thrift plan for nonrepresented employees) and two single-employer collectively bargained defined benefit plans.

Based on a careful study and analyses of Plans B and C following the Merger, Company E has determined not to continue Plan B and Plan C (as in effect on the effective date of the Merger Agreement) after September 30, 1998 because they do not integrate well with its thrift and defined benefit plans that are maintained for the benefit of eligible nonrepresented employees (including Company D and Taxpayer A) that are required to be aggregated with Company E under sections 414(b) and (c). Company D also wants to avoid coverage issues involving Plans B and C after the grace period under §410(b)(6)(C) ended on September 30, 1998.

Company E has determined that Plan C should be amended and restated to become a mirror image of its thrift plan, effective as of July 1, 1998. With respect to Plan B, Company E has determined that Taxpayer A should merge Plan B into Plan C, which merger was completed on February 24, 1999, effective September 30, 1998. Company E has determined that Taxpayer A should continue payments of quarterly installments due on the Second Plan Loan through September 30, 1998 as of which-time, in anticipation of merging Plan B into Plan C, Company E determined that it was advisable to instruct Taxpayer A to make a contribution to Plan B that was sufficiently large enough to pay off the Second Plan Loan. As of September 30, 1998, Taxpayer A paid the total outstanding balance of the Second Plan Loan and allocated all of the stock in the suspense account to participants' accounts in accordance with the terms of Plan B which include language designed to implement the limitations of section 415. Furthermore, Company E caused Taxpayer A to amend Plan B (I) to ensure compliance with the applicable law and regulation through the Taxpayer Relief Act of 1997, (ii) to delete the ESOP features an instant after repayment of the Second Plan Loan (with preservation of Plan B's features required to be protected under applicable provisions of the Internal Revenue Code) and (iii) to freeze eligibility, suspend contributions, to allocate the stock in the suspense account to participants' accounts and to fully vest all participants' accounts, effective immediately before the September 30, 1998 effective date of the Merger of Plan B into Plan C. As a result, former participants in Plan B were covered in Plan C and Company F's defined benefit plan, effective as of October 1, 1998.

Based on the foregoing facts and representations, your authorized representative has requested the following ruling:

> Taxpayer A's accelerated payment as of September 30, 1998 of the total outstanding balance of the Second Plan Loan, did not and will not cause the Second Plan Loan or any part thereof to fail to meet the exemption requirements set forth in Section 4975(d)(3) and the regulations thereunder because under the above facts and circumstances, such payment was and is primarily for the benefit of Plan B participants and beneficiaries.

An ESOP is an arrangement designed to invest primarily in employer securities. An ESOP must be part of a stock bonus plan qualified under section 401(a) of the Code, or a stock bonus plan and a money purchase plan qualified under §401(a). A leveraged ESOP horrows funds which it uses to purchase employer securities, usually from the employer. The ESOP loan is generally guaranteed by the employer. The acquired employer securities are held in a suspense account pending allocation to the accounts of plan participants in accordance with the rules of section 54.4975-11(d) of the Excise Tax Regulations. The ESOP generally uses employer contributions to the plan to repay the exempt loan.

Under section 4975(d)(3)(A) of the Code, an ESOP loan generally is exempt from the prohibitions provided in section 4975(c) and the excise taxes imposed by sections 4975(a) and (b) only if the loan is primarily for the benefit of the participants and beneficiaries of the plan (the "primary benefit requirement"). Section 54.4975-7(b)(3) of the regulations provides that all of the surrounding facts and circumstances will be considered in determining whether an ESOP loan satisfies the primary benefit requirement. Among the relevant facts and circumstances are whether the transaction promotes employee ownership of employer stock, whether contributions to the ESOP are recurring and substantial, and the extent to which the method of repayment of the loan benefits the employees. All aspects of' the loan transaction, including the method of repayment, will be scrutinized to determine whether the primary benefit requirement is satisfied.

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You represent that Taxpayer A made periodic payments of principal and interest due under the First Plan Loan which was ultimately paid in full on September 30, 1994. Approximately 358,000 shares of Company D's common stock were purchased by Plan B and were allocated to participants' accounts as a result of the amortization of the amounts due under the First Plan Loan. You also represent that substantial and recurring contributions have been made by Taxpayer A during the term of the Second Plan Loan resulting in reduction of the principal amount due under the Second Plan Loan more rapidly than is required under the amortization schedules for such loan. As of September 30, 1997, approximately $2.2 million in principal payments had been made under the Second Plan Loan leaving a principal balance of $1.3 million. You represent that effective July 13, 1997, Taxpayer A's parent, Taxpayer D, merged with Taxpayer E. You also assert that based on a careful study and analyses of Plans B and C, Company E has determined, following the merger of Company D with Company E, to amend Plan C to make it a mirror image of Company E's thrift plan and not to continue Plan B, but to merge it into Plan C, as amended and restated. Former participants of Plans B will be covered in Plan C and Company F's defined benefit plan, effective October 1, 1998.

Upon consideration of all of the surrounding facts and circumstances of this case, in accordance with section 54.4975-7(b)(3) of. the Regulations, we conclude with respect to your ruling request that Taxpayer A's accelerated payment as of September 30, 1998 of the total outstanding balance of the Second Plan Loan with respect to which the last quarterly installment was not due until September 30, 2000, did not and will not cause the Second Plan Loan or any part thereof to fail to meet the exemption requirements set forth in section 4975(d)(3) of the Code and the regulations thereunder because under the above facts and circumstances, such payment was and is primarily for the benefit of Plan B's participants and beneficiaries.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited by others as precede?&.

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

Sincerely,

(signed) JOYCE E. FLOYD

Joyce E. Floyd
Chief, Employee Plans
Technical Branch 2

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Enclosure:

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Notice 437

cc:

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