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Internal Revenue Service

Department of the Treasury

Index Nos: 402.06-00
402.08-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply to: OP:E:EP:T:3

Date: JUL 14 1999

LEGEND:

Taxpayer A:

Taxpayer B:

Company C:

Plan X:

Date 3:

Date 4:

Date 5:

Sum 1:

Sum 2;

Sum 3:

Sum 4:

Dear Ms.

This is in response to the letter, submitted by your authorized representative on your behalf, as supplemented by correspondence dated , and in which you, through your representative, request several letter rulings under section 402(c) of the Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A was born on Date 3 and died on Date 4 at 80 years of age. Taxpayer A was an employee of Company C and a participant in Plan X until his death. Your authorized representative asserts that Plan X is qualified within the meaning of Code section 401(a).

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Taxpayer A received minimum required distributions, within the meaning of Code section 401(a)(9), from Plan X until his death. Taxpayer B, Taxpayer A's surviving spouse, is the beneficiary of Taxpayer A's interest in Plan X.

On Date 5, Taxpayers A and B elected to receive Taxpayer A's interest in Plan X in the form of a lump sum equivalency of a single life annuity paid out over the joint life expectancies of Taxpayers A and B. Taxpayer B also possesses the right to withdraw after the death of Taxpayer A, at any time and as many times as she may elect, any amount or amounts as she deems necessary or appropriate from income, and thereafter from the principal remaining in Taxpayer A's Plan X interest.

Your authorized representative asserts that Taxpayer B has received minimum required distributions, as that term is used in Code section 401(a)(9), annually since Taxpayer A's death. Taxpayer B's last required distribution was received during the calendar, and Plan X's plan, year ending December 31, 1998.

The required distribution for the 1998 calendar year was Sum 1; for the 1997 calendar year, it was sum 2; and for the 1996 calendar year, it was Sum 3. Sum 1 exceeds both Sum 2 and Sum 3.

Taxpayer B proposes to exercise her power of withdrawal, referenced above, convert her annual payments to a single sum, final payment, and withdraw the full amount remaining of Taxpayer A's interest in Plan X payable to her as Taxpayer B's beneficiary, and roll over the eligible portion of said distribution into an individual retirement arrangement (IRA) set up and maintained in her name. The rollover may take the form of a direct transfer as provided in Code section 401(a)(31). If not, the rollover will be accomplished no later than the 60th day following the date on which the distribution is made from Plan X to Taxpayer B. The amount of the single sum distribution from Plan X will approximate Sum 4 which is approximately 20 times greater than Sum 1.

Your authorized representative has asserted, on your behalf, that the amount rolled over into an IRA maintained in the name of Taxpayer B, will not include the required distribution, as defined in Code section 401(a)(9), for the year in which the Plan X distribution is made.

Based on the above, you, through your authorized representative, request the following letter rulings:

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(1) That Taxpayer B, as Taxpayer A's surviving spouse and beneficiary, is eligible to roll over the eligible portion of the distribution of her surviving spouse's interest in Taxpayer A's Plan X benefit into an IRA set up and maintained in her name, pursuant to Code section 402(c), so long as the rollover occurs either as a "direct transfer", as that term is defined in Code section 401(a)(31), or, if not, so long as the rollover occurs no later than the 60th day following the date on which the distribution is made from Plan X; and

(2) that Taxpayer B will not be required to include in gross income for federal income tax purposes, for the year in which Plan X makes its distribution to Taxpayer B and the year in which Taxpayer B is treated as receiving said distribution, any portion of her survivor's interest in Taxpayer A's interest in Plan X that is timely rolled over (or directly transferred) into Taxpayer B's IRA.

With respect to your ruling requests, section 402(c)(1) of the Code provides, generally, that if any portion of an eligible rollover distribution from a section 401(a) of the Code qualified retirement plan is transferred into an eligible retirement plan, the portion of the distribution so transferred shall not be includible in gross income in the taxable year in which paid.

Section 402(c)(2) of the Code provides that the maximum amount of an eligible rollover distribution to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)).

Section 402(c)(4) of the Code defines "eligible rollover distribution" as any distribution to an employee of all or any portion of the balance to the credit of an employee in a qualified trust except the following distributions:

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made-

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

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(ii) for a period of 10 years or more, and

(B) any distribution to the extent the distribution is required under section 401(a)(9).

Section 402(c)(8) of the Code defines eligible retirement plan as (i) an individual retirement account described in section 408(a), (ii) an individual retirement annuity described in section 408(b) (other than an endowment contract), (iii) a section 401(a) of the Code qualified retirement plan, and (iv) an annuity plan described in section 403(a).

Section 402(c)(3) of the Code provides, generally, that section 402(c)(1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

Section 401(a)(31)(A) of the Code provides that a trust shall constitute a section 401(a) qualified trust only if the plan of which such trust is a part provides that if the distributee of any eligible rollover distribution-

(i) elects to have such distribution paid directly to an eligible retirement plan, and

(ii) specifies such eligible retirement plan to which such distribution is to be paid (in such form and at such time as the plan administrator may prescribe),

such distribution shall be in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified.

Section 401(a)(31)(B) of the Code provides that subparagraph (A) shall apply only to the extent that the eligible rollover distribution would be includible in gross income if not transferred as provided in subparagraph (A) (determined without regard to sections 402(c) and 403(a)(4)).

The term "eligible rollover distribution" when used in section 401(a)(31) of the Code has the same meaning as when used in section 402(c) of the Code.

The term "eligible retirement plan" when used in section 401(a)(31) of the Code includes IRAs defined in sections 408(a) and 408(b) of the Code.

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Generally, a direct trustee-to-trustee transfer described in section 401(a)(31) of the Code constitutes a "direct rollover" of an "eligible rollover distribution" and is entitled to tax-deferred treatment pursuant to section 402(c) of the Code.

Section 1.402(c)-2 of the Income Tax Regulations, Question and Answer-5, provides, that, generally, whether a series of payments is a series of substantially equal periodic payments over a specified period is determined at the time payments begin, and by following the principles of section 72(t)(2)(A)(iv), without regard to contingencies or modifications that have not yet occurred.

Section 1.402(c)-2 of the Income Tax Regulations, Question and Answer-6, provides that, with an exception not pertinent here, a payment is treated as independent of the payments in a series of substantially equal payments, and thus not part of the series, if the payment is substantially larger or smaller than the other payments in the series. For example, if an employee elects a single payment of half of his plan benefit with the remainder of the plan benefit paid over the life expectancy of the distributee, the single payment is treated as independent of the payments in the series and is an eligible rollover distribution unless otherwise excepted.

Section 1.402(c)-2 of the Income Tax Regulations, Question and Answer-6, does not define the term "substantially larger or smaller" although it does provide an example thereof. In this case, the payment which Taxpayer B intends to receive, Sum 4, is approximately 20 times as large as Sum 1, and is approximately 7.5 times as large as the sum of Sums 1, 2 and 3. Under the circumstances, the Service believes that Sum 4 is substantially greater than each yearly payment which Taxpayer B has been receiving, such that it falls within the scope of section 1.402(c)-2 of the Income Tax Regulations, Q&A-6.

Thus, with respect to your ruling requests, we conclude as follows:

(1) That Taxpayer B, as Taxpayer A's surviving spouse and beneficiary, is eligible to roll over the eligible portion of the distribution of her surviving spouse's interest in Taxpayer A's Plan X benefit into an IRA set up and maintained in her name, pursuant to Code section 402(c), so long as the rollover occurs either as a "direct transfer",

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as that term is defined in Code section 401(a)(31), or, if not, so long as the rollover occurs no later than the 60th day following the date on which the distribution is made from Plan X; and

(2) that Taxpayer B will not be required to include in gross income for federal income tax purposes, for the year in which Plan X makes its distribution to Taxpayer B and the year in which Taxpayer B is treated as receiving said distribution, any portion of her survivor's interest in Taxpayer a's interest in Plan X that is timely rolled over (or directly transferred) into Taxpayer B's IRA.

These rulings are based on the assumption that Plan X will be a Code section 401(a) qualified retirement plan at all times relevant thereto, and that its related trust will be tax-exempt within the meaning of Code section 501(a) at all times relevant thereto. Furthermore, it assumes that Taxpayer B will not roll over (or directly transfer) any portion of the Plan X distribution referenced above which constitutes a required distribution under Code section 401(a)(9). Finally, it assumes that the IRA into which Taxpayer B will roll over (or directly transfer) the eligible portion of her Plan X distribution will meet the requirements of Code section 408(a).

This ruling is directed solely 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.

Pursuant to a power of attorney on file with the Service, the original of this letter ruling is being sent to your authorized representative.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Chief, Employee Plans
Technical Branch 3

Enclosures:

Deleted copy of ruling letter
Form 437

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