



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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OCT - 4 2004

SE. T. EP. RA. T 3

Uniform Issue List: 401.09-00

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Legend

Taxpayer A = * * *

Company B = * * *

Company C = * * *

Amount D = * * *

Amount E = * * *

Plan X = * * * Profit Sharing Plan and Trust

Plan Y = * * * Profit Sharing Plan and Trust

Dear * * *:

This is in response to your letter dated June 25, 2004, supplemented by your letter dated August 24, 2004, in which your authorized representative requested a ruling on your behalf concerning the required minimum distribution rule under Section 401(a)(9) of the Income Tax Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A is an employee of Company B and Company C. Taxpayer A does not intend to separate from the service of, or retire from, Company B.

Company B maintains Plan X and Company C maintains Plan Y. Taxpayer A is an active participant in both plans. Both Plan X and Plan Y use the calendar year

as their plan year. Your authorized representative asserts, on your behalf, that Plans X and Y meet the requirements of Code section 401(a).

Taxpayer A's account balances are Amount D in Plan X and Amount E in Plan Y. Taxpayer A is a 5% owner of Company C but not in Company B. Taxpayer A will attain 70 ½ in [REDACTED]. Taxpayer A has reached his "Normal Retirement Date" with respect to Plan Y but not with respect to Plan X. Plan Y permits in-service distributions to participants who have reached their Normal Retirement Date. Plan X permits participants to roll over eligible distributions received from other qualified plans into Plan X.

Taxpayer A has represented that he is not a 5% owner of Company B as that term is defined in section 416(i) of the Code. Taxpayer A has also represented that Plan Y meets the requirements of section 401(a)(11)(B)(iii); as a result, it is excluded from having to comply with the joint and survivor and preretirement survivor annuity requirements found under section 401(a)(11)(A) of the Code.

Taxpayer A intends to withdraw his calendar year [REDACTED] required distribution from Plan Y prior to [REDACTED]. After receiving his required distribution for [REDACTED] from Plan Y, Taxpayer A intends to withdraw the balance of his account from Plan Y and roll over said balance into Plan X prior to [REDACTED].

Based on the facts and representations, you request a ruling that Taxpayer A will not be required to receive a distribution from the amount rolled over from Plan Y into Plan X until he reaches his Required Beginning Date under Plan X.

Section 401(a) of the Internal Revenue Code ("Code") states that a trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section.

Section 401(a)(9) of the Code provides the rules governing required distributions. Specifically, section 401(a)(9)(A) of the Code states that a trust shall not constitute a qualified trust under this subsection unless the plan provides that the entire interest of each employee will be distributed to such employee not later than the required beginning date, or will be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary.)

Section 401(a)(9)(C)(i) of the Code defines "required beginning date" as April 1 of the calendar year following the later of (I) the calendar year in which the employee attains age 70½, or (II) the calendar year in which the employee retires. Section 401(a)(9)(C)(ii) provides that, in the case of an employee who is a 5% owner (as defined in section 416(i) of the Code), the required beginning

date is solely the April 1 following the plan year ending in the calendar year in which the employee attains age 70½ and not the later of the calendar year in which the employee attains age 70 ½ or the calendar year in which the employee retires.

Section 1.401(a)(9)-7 of the "Final" Income Tax Regulations ("Regulations"), Question and Answer-2, states that if an amount is distributed by one plan (distributing plan) and is rolled over to another plan (receiving plan), the benefit of the employee under the receiving plan is increased by the amount rolled over for purposes of determining the required minimum distribution for the calendar year immediately following the calendar year in which the amount rolled over is distributed. In other words, the amount rolled over is subject to the minimum distribution rules of the receiving plan in the calendar year immediately following the calendar year in which the amount was distributed from the distributing plan.

Section 416(i) of the Code defines a 5% owner, in the case when the employer is a corporation, as any person who owns (or is considered as owning within the meaning of the constructive ownership rules under section 318(a)(2) of the Code, substituting 5% for 50%) more than 5% of the outstanding stock of the corporation or stock possessing more than 5% of the total combined voting power of all stock of the corporation. If the employer is not a corporation, a 5% owner is defined as any person who owns more than 5% of the capital or profits interest in the employer. The aggregation rules under sections 414(b), (c) and (m) of the Code do not apply for purposes of determining ownership in the employer under section 416(i) of the Code.

Section 401(a)(11)(B) states, in relevant part, that a defined contribution plan is not required to provide a joint and survivor annuity and hence does not require spousal consent for a distribution if the plan provides for all of the following requirements: the participant's nonforfeitable accrued benefit is payable in full, on the death of the participant, to the participant's surviving spouse (or if there is no surviving spouse or if the spouse consents thereto, to a designated beneficiary); such participant does not elect a payment of benefits in the form of a life annuity; and, with respect to such participant, such plan is not a direct or indirect transferee of a defined benefit plan or a defined contribution plan subject to the minimum funding standards of section 412 of the Code.

The information presented by Taxpayer A demonstrates that he is not a 5% owner of Company B as defined in section 416(i) and that Taxpayer A is not required to obtain spousal consent for the distribution from Plan Y because Plan Y is excluded from the joint and survivor annuity and preretirement survivor annuity requirements of section 401(a)(11)(A) of the Code. Taxpayer A has asserted that he will take a calendar year [REDACTED] required minimum distribution from Plan Y by [REDACTED] and that this required distribution will not be rolled over into Plan X. Taxpayer A has also asserted that, after receiving his

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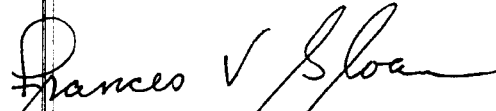
calendar year required distribution, he will withdraw the balance of his Plan Y account and roll said balance into Plan X by [REDACTED]

Therefore, based on the above facts, the Service concludes that Taxpayer A will not be required to receive a distribution with respect to the amount distributed from Plan Y and rolled over into Plan X until he reaches his "required beginning date" under Plan X as determined under section 401(a)(9)(C)(i) of the Code.

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 wish to inquire about this ruling, please contact ***, ***, at ***. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures: Deleted copy of this letter
Notice of Intention to Disclose, Notice 437

cc: ***

