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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

OCT 26 2005

*Uniform Issue List: 4975.00-00*

**Legend:**

Decedent A	=
Company B	=
Trust C	=
Sub-Trust D	=
Sub-Trust E	=
Date M	=
Date N	=
Date O	=
State P	=
Plan X	=
Amount P	=

Dear

This is in response to your request for a private letter ruling, submitted by your authorized representative by letter dated March 3, 2005, concerning the proper rollover treatment of a distribution from Decedent A's retirement plan under section 401(a)(9) of the Internal Revenue Code (Code). Correspondence dated July 13, 2005, and August 15, 2005, supplemented the request.

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Your authorized representative has submitted the following facts and representations:

Decedent A, your husband, was an employee of Company B, and a participant in Plan X. You and Decedent A created Trust C on Date M, 2001, and were the named Trustees of Trust C. Trust C is a trust created and governed under the laws of State P. On Date N, 2001, Decedent A designated Trust C as beneficiary of his interest in Plan X.

Under the terms of Trust C, you became its sole trustee upon the death of Decedent A. Furthermore, you are the primary beneficiary of Trust C.

Decedent A passed away on Date O, 2003, at the age of 60, leaving you as his surviving spouse, and three children. The value of Decedent A's interest in Plan X is currently Amount P. You are currently 63 years old.

Upon the death of Decedent A, Trust C was divided into two sub-trusts, Sub-Trust D and Sub-Trust E. Pursuant to Section 1, Article Seven of Trust C, Plan X amounts due Decedent A at his death will be allocated to Sub-Trust E. Article Nine of Trust C governs the operation of Sub-Trust E.

Section 1.a of Article Nine of Trust C provides that "Our Trustee shall pay to, or apply for the benefit of the Surviving Trustor, so long as the Surviving Trustor lives, the entire net income of [Sub-Trust E] in monthly, or other convenient installments, as agreed upon by the Surviving Trustor and our Trustee, but no less often than annually."

Section 1.b of Article Nine of Trust C provides that "(a) t any time during the Surviving Trustor's life, our trustee shall pay to or apply for the benefit of the Surviving Trustor and the first Deceased Trustor's descendents, so much of the principal of [Sub-Trust E] as our Trustee in our Trustee's discretion deems proper for their health education, maintenance or support."

Section 1.c of Article Nine of Trust C provides, in relevant part , that "(i)n exercising discretion, our Trustee may make payments which benefit some beneficiaries more than others, and may make payments to or for one or more beneficiaries to the exclusion of others. However, our Trustee shall, at all times, give primary consideration to the Surviving Trustor's needs and only thereafter to the first Deceased Trustor's descendents."

Article Fourteen, Section 1, of Trust C provides, in relevant part, that "...it is our intention that our Trustee have the power respecting property in our Trust Estate that an absolute owner of such property would have. In accordance with such intention, any power our Trustee needs to administer our Trust Estate, which is not hereinafter listed, shall be considered as provided for herein..."

Article Fifteen, Section 19 of Trust C is entitled "Provisions Respecting Retirement Assets". Article Fifteen, Section 19e of Trust C provides, in relevant part, that "To the extent our Trustee has an interest in a Retirement Plan, our Trustee shall have the power to determine the form and manner of distribution from such Retirement Plan..."

Article Fifteen, section 19.j.1 of Trust C provides, in relevant part, that " it is our desire to allocate the greatest amount possible of the Deceased's Trustor's Contributive share to

[Sub-Trust E] while at the same time avoiding or minimizing the acceleration of income tax or any retirement Plan proceeds.

Article Fifteen, Section 19.j.2 of Trust C provides, in relevant part, that "...Any Retirement Plan proceeds or Retirement Plan Death Benefits not allocated to [Sub-Trust E] shall....be distributed to the Surviving Trustor outright and free of trust."

Under State P law, the duties of a trustee are generally measured by the terms of the trust instrument and not by rules of law. State P law provides a trustee with wide powers to carry out the purposes of a trust. A "trustee may exercise any powers in addition to the powers authorize by [State P law] that are necessary or appropriate to carry out the purpose of the trust."

It is represented that under State P law, the amount that a beneficiary is entitled to receive under a trust may be properly left to the discretion of the trustee, and the income and principal of a trust should be distributed according to the trustor's intent as manifested in the trust instrument. In exercising such discretion, the trustee may not act arbitrarily in the matter. His or her discretion must be reasonably exercised to accomplish the purposes of the trust according to the trustor's intention, and his or her exercise of discretion is subject to judicial review and control.

It is represented that under State P law, you, as trustee for Sub-Trust E, have the legal authority to distribute the entire distribution from Plan X in one lump sum to yourself as beneficiary of Sub-Trust E.

It is represented that Plan X authorizes a single sum distribution to Trust C, as beneficiary, of the full amount due decedent A under Plan X. You, as trustee of Trust C, propose to receive a single sum distribution of all amounts due Decedent A under Plan X. After receipt of said single sum distribution, in accordance with State P law, you, as trustee of Trust C and Sub-Trust E created under its terms, will play the full distribution to yourself as beneficiary. After you receive the distribution as beneficiary, you will roll over the entire distribution into an individual retirement arrangement ("IRA") set up and maintained in your name. Said rollover will occur no later than the 60<sup>th</sup> day after the day that you receive the Plan X distribution in your capacity as trustee of Trust C/Sub-Trust E.

Based on the foregoing you request a ruling that the distribution from Plan X through Sub-Trust E and subsequent rollover an IRA will constitute a proper and valid rollover and that no part of such distribution should be included in your taxable income.

Section 402(c)(1) of the Code states that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and such distribution is subsequently transferred to an eligible retirement plan, then such distribution shall not be includable in gross income for the taxable year in which paid.

Section 408(c)(2) of the Code states that in the case of any eligible rollover distribution, the maximum amount transferred to which the preceding sentence refers shall not exceed the portion of such distribution which is includible in gross income.

Section 402(c)(4) of the Code defines the term "eligible rollover distribution" as any distribution to an employee of all or any portion of the balance to the credit of the

employee in a qualified trust, except for certain exceptions, none of which are applicable hereto.

Section 402(c)(8)(B) 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) qualified retirement plan, and (iv) an annuity plan described in Code section 403(a).

Section 402(c)(3) of the Code provides, generally, that the exclusion from income 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 402(c)(5) of the Code states that a transfer to an eligible retirement plan described in (i) or (ii) of subparagraph (8)(B) resulting in any portion of a distribution being excluded from gross income under paragraph (1) shall be treated as a rollover contribution described in Code section 408(d)(3).

Section 402(c)(9) of the Code provides, generally, that if a distribution attributable to an employee is paid to the spouse of the employee after the employee's death, section 402(c) will apply to such distribution in the same manner as if the spouse were the employee.

Section 1.402(c)-2 of the Income Tax Regulations, Question and Answer 12, provides, generally, that if a distribution attributable to an employee is paid to the employee's surviving spouse, section 402(c) applies to the distribution in the same manner as if the spouse were the employee.

Generally, if either a decedent's qualified plan or IRA proceeds pass through a third party, e.g., a trust, and then are distributed to the decedent's surviving spouse, said spouse will be treated as acquiring them from the third party and not from the decedent. Thus, generally, said surviving spouse will not be eligible to roll over either the qualified plan or the IRA proceeds into his/her IRA.

However, in the present case, State P law and the provisions of Trust C give you, as sole trustee of Trust C and Sub-Trust E created under its terms, wide authority to determine how much of the assets of Sub-Trust E you may pay to yourself as sole lifetime beneficiary of Sub-Trust E. Consistent with such grant of authority, you, as trustee of Trust C/Sub-Trust E, intend to request a distribution of Decedent A's Plan X balance and then pay yourself, as primary beneficiary of Sub-Trust E, the full amount distributed from Plan X. Upon receipt, you, as beneficiary, intend to accomplish a timely rollover of the distribution into an IRA that will be set up in your name. Under this set of circumstances, all action taken by you with respect to both the Plan X distribution and the subsequent rollover into an IRA will be in accordance with the laws of State P and the terms of Trust C.

Therefore, we conclude that the distribution to you from Plan X through Sub-Trust E and subsequent rollover into an IRA set up and maintained in your name will constitute a valid rollover as long as the rollover is timely accomplished, and that if timely rolled over into an IRA, no part of such distribution will be included in your gross income in the year of distribution.

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No opinion is expressed as to the federal tax consequences of the transaction described above under any other provisions of the Code.

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 is being sent to your authorized representative in accordance with a power of attorney on file in this office. If you have any questions concerning this private letter ruling, please contact \*\*\*\*\* (ID: \*\*-\*\*\*\*) at (\*\*) \*\*\*-\*\*\*\* (not a toll-free number).

Sincerely Yours,

A handwritten signature in cursive script that reads "Frances V. Sloan".

Frances V. Sloan, Manager  
Employee Plans Technical Group 3

CC: