



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Number: **200745022**  
Release Date: 11/9/2007

T:EP:RA:T3

AUG 15 2007

UICs: 402.00-00  
402.08-00  
411.09-00  
417.00-00

ATTN:

LEGEND:

Company A:

Company B:

Individual D:

Committee E:

Plan X:

Case X:

Court X:

State A:

State B:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Date 8:

Date 9:

Settlement  
Agreement X:

Judge J:

Number 1

Number 2:

Number 3:

Number 4:

Amount 1:

Amount 2:

Dear

This is in response to the letter ruling request dated September 1, 2006, as supplemented, on November 1, 2006, April 25, 2007, July 31, 2007, August 6, 2007, and August 8, 2007, in which you, through your authorized representative, request a series of letter rulings under sections 402, 411(a)(11), and 417 of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request.

FACTS:

Company A is a publicly held corporation organized under the laws of State A which has its principal place of business in State B.

Plan X, a defined benefit plan, was established effective Date 1, 1945. Plan X was originally sponsored by Company B. Company A acquired Company B on Date 2, 1998, and the two companies subsequently merged. It is asserted on

your behalf that Plan X was qualified within the meaning of Code section 401(a).

Effective Date 3, 1998, Plan X was terminated. The Internal Revenue Service issued a favorable "Determination Letter" with respect to the termination of Plan X on Date 4, 2000.

In order to accomplish the termination of Plan X, Plan X was amended to permit participants, the present values of whose accrued benefits exceeded \$5,000.00 to choose to receive single sum distributions of the present values of their accrued benefits. Approximately Number 1 participants in Plan X were either "cashed-out" or chose to receive single sum distributions of their Plan X benefits. It has been asserted on your behalf that by the end of the Plan Year ending Date 5, 2002, all Plan X assets were distributed to participants thereof. Furthermore, it has been represented on your behalf that the participant consent requirements of Code section 411(a)(11) and the spousal consent requirements of Code section 417 were observed with respect to the single sum distributions made in conjunction with the termination of Plan X.

On Date 6, 2002, Individual D, a former employee of Company B filed a class action lawsuit against Company A, Plan X, and Committee E in Court X ("Case X"). The plaintiffs in Case X were Individual D and a class consisting of all Plan X participants who received single sum distributions after Date 7, 1999 except several enumerated classes of Plan X participants. The class action complaint alleged that an erroneous interest rate was used to calculate the single sum values of monthly annuities due affected Plan X participants.

It has been represented that the class referenced above excluded any Plan X participant who was receiving benefits in the form of an annuity.

Prior to trial, on or about Date 8, 2006, the parties to Case X entered into a comprehensive settlement ("Settlement Agreement X") pursuant to which defendants in Case X agreed to pay Amount 1 in settlement of all claims of the plaintiffs in Case X. After payment of attorney fees, court costs, and expenses incurred by Case X plaintiffs, including the payments of an ancillary claim unrelated to this ruling request, affected Plan X participants/Case X plaintiffs were entitled to receive Amount 2. It has been represented on your behalf that throughout the settlement negotiations, plaintiffs and defendants of Case X were represented by different, independent counsel.

On or about Date 9, 2007, Judge J, Chief Judge of Court X, signed an order approving Settlement Agreement X.

Defendants intend to place Amount 2 into an escrow account which will hold said Amount 2 for the sole purpose of paying said Amount 2 to affected Plan X participants. It is contemplated that the settlement proceeds that will be placed in

the above-referenced escrow account will be distributed to the Number 1 Plan X participants as soon as administratively feasible. It is represented that distributions from the escrow account will be made within 30 days of the date on which Company A receives a letter ruling from the Service. Any affected Plan X participant/member of the Case X class will receive a Form 1099-R Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, Inc. reflecting his/her receipt of amounts pursuant to the settlement of Case X.

It has been represented that, in order to make the distributions from the above-referenced escrow account, Plan X will be updated to comply with current Code section 401(a) qualification requirements. Additionally, distributions from the escrow account will comply with the terms of the updated Plan X.

It has also been represented that a "Rollover Election Form" and a "Special Tax Notice" will be provided to each member of the above-referenced class entitled to receive a distribution of at least \$200.00 (approximately Number 2), and that a "Special Tax Notice" will be provided to each member of the above-referenced class entitled to receive a distribution of less than \$200.00 (approximately Number 3).

Additionally, it has been represented that approximately Number 4 members of the class will receive distributions from the escrow account in excess of \$5,000.00. With respect to these class members/participants, it has been represented that they will be required to consent to the distributions and that no payments will be made to them before Company A receives executed election forms in which they choose the form(s) of payments and consent thereto. Finally, it has been represented that all required participant and spousal consents will be obtained.

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

1. That distributions to affected Plan X participants/Case X class members from the above referenced escrow account qualify for treatment in accordance with Code section 402(c);
2. that distributions to affected Plan X participants/Case X class members from the above referenced escrow account qualify for rollover treatment in accordance with Code section 402(c);
3. that the 60-day rollover period found in Code section 402(c)(3) shall commence with respect to a Plan X participant/Case X class member from the date a distribution from the above-referenced escrow account is received by a payee or distributee as the case may;

4. that distributions from the above-referenced escrow account will not be subject to the consent requirements of Code section 411(a)(11); and
5. that distributions from the above-referenced escrow account will not be subject to the spousal consent requirements of Code section 417.

LAW AND ANALYSIS:

With respect to your ruling requests, Code section 402(a)(1) generally provides that amounts held in a trust that is exempt from tax under Code section 501(a) and that is part of a plan that meets the qualification requirements of Code section 401(a) will not be taxable until such time as such amounts are actually distributed to distributees under such plan.

Code section 402(c)(1) provides 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 the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible gross income for the taxable year in which paid.

Code section 402(c)(4) provides, in relevant part, that an "eligible rollover distribution" is a distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust; except that such term shall not include:

(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

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

(B) any distribution to the extent such distribution is required under section 401(a)(9), and

(C) any distribution which is made upon hardship of the employee.

Code section 402(c)(8)(B) defines an eligible retirement plan to include an individual retirement account described in Code section 408(a), an individual

retirement annuity described in Code section 408(b); a qualified trust, and an annuity plan described in Code section 403(a).

Code section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property.

Code section 401(a)(11)(A) provides that, in the case of a plan to which this paragraph applies, except as provided in Code section 417, a trust forming part of such plan shall not constitute a qualified trust under this section unless—

- (i) in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant is provided in the form of a qualified joint and survivor annuity, and
- (ii) in the case of a vested participant who dies before the annuity starting date, and who has a surviving spouse, a qualified preretirement survivor annuity is provided to the surviving spouse of such participant.

Code section 401(a)(11)(B) provides that this paragraph shall apply to—

- (i) any defined benefit plan,
- (ii) any defined contribution plan which is subject to the funding standards of section 412, and
- (iii) any participant under any other defined contribution plan unless the requirements of (iii)(I), (iii)(II) and (iii)(III) are met.

Code section 417 provides the rules governing qualified preretirement survivor annuities and qualified joint and survivor annuities. In relevant part, Code section 417 requires that such annuities may only be waived with the written consent of a plan participant's spouse.

Code section 417(e)(1) provides, in summary, that prior to an annuity starting date, the present value of either a qualified preretirement annuity or qualified joint and survivor annuity that does not exceed the amount that can be distributed without participant consent pursuant to Code section 411(a)(11) may be immediately distributed.

Code section 417(e)(2) provides, in summary, that if the present value of either a qualified preretirement annuity or qualified joint and survivor annuity exceeds the amount that can be distributed without participant consent pursuant to Code section 411(a)(11) said value may be immediately distributed only with participant and spousal consent.

Section 1.417(e)-1(b)(2) of the Income Tax Regulations provides, in relevant part, that "...no consent is required before the annuity starting date if the present value of the nonforfeitable benefit is not more than the cash-out limit in effect

under section 1.411(a)-11(c) (3)(ii).

Code section 411(a)(11) provides, in summary, that a plan is qualified within the meaning of Code section 401(a)(1) only if the plan provides that if the present value of the nonforfeitable accrued benefit exceeds \$5,000, such benefit may only be immediately distributed with the consent of the plan participant.

Section 1.411(a)-11 (c) (3)(i) of the regulations provides, in relevant summary, that participant consent to a distribution is not required if the present value of the nonforfeitable accrued benefit does not exceed the cash-out limit. In such a case, the cash-out requirements are deemed satisfied, and a plan may distribute such portion to a participant in a single sum.

Section 1.411(a)-11 (c) (3)(ii) of the regulations provides, in relevant part, that the cash-out limit for a date is the amount described in section 401(a)(11)(A) for the plan year that includes that date.

Section 1.411(e)(1) of the regulations provides that the requirements of this section apply before, on and after a plan termination.

In this case, the members of the plaintiff class in the class action referenced above were entitled to receive single sum distributions from Plan X. The class members received single sum distributions which their suit, referenced above, alleged were less than the distributions to which they were entitled under the provisions of Plan X. The settlement proceeds referenced herein represent amounts to which the class members assert they were and are entitled under the provisions of Plan X. As noted above, the settlement proceeds will be paid into the above-referenced escrow account, will be held there for the benefit of members of the plaintiff class, and will be distributed from said escrow account.

Code section 402(c), by its terms, refers to distributions made from a Code section 401(a) qualified retirement plan to individuals entitled to receive said distributions under plan terms. The distributions in this case will be made from an escrow account created to hold settlement proceeds payable to members of the plaintiff class described above. Said class members were entitled to receive amounts from Plan X and said class members would have received amounts represented by the settlement proceeds directly from Plan X if their Plan X single sum distributions had been calculated properly.

In this case, the above-referenced escrow account will eventually hold amounts due Plan X participants and payable to them because of Settlement Agreement X and earnings thereon. Under the particular facts of this case, it is appropriate to treat the escrow account as an entity set up solely to hold Plan X assets for the purpose of distributing said assets to Plan X participants as soon as administratively feasible.

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

1. That distributions to affected Plan X participants/Case X class members from the above referenced escrow account qualify for treatment in accordance with Code section 402(c);
2. that distributions to affected Plan X participants/Case X class members from the above referenced escrow account qualify for rollover treatment in accordance with Code section 402(c); and
3. that the 60-day rollover period found in Code section 402(c)(3) shall commence with respect to a Plan X participant/Case X class member from the date a distribution from the above-referenced escrow account is received by a payee or distributee as the case may be of said distribution

With respect to your fourth and fifth ruling requests, as noted above, Code sections 401(a)(11), 411(a)(11), and 417 provide requirements for either participant and/or spousal consent to certain distributions from most Code section 401(a) qualified retirement plans. Plan X was subject to the requirements contained in said Code sections.

As noted above, it has been represented that consents intended to comply with the requirements of Code sections 411(a)(11) and 417 were obtained prior to Plan X's distributing its assets and prior to the filing of Case X with Court X. Thus, affected Plan X participants and/or their spouses consented to the single sum distributions which were calculated improperly. The settlement proceeds to be held in the above-referenced escrow account contains amounts which constitute additional portions of the single sum distributions previously made from Plan X which would have been paid to affected Plan X participants and/or their spouses if correct interest rate assumptions had been made. In short, the amounts to be disbursed from the escrow account contain funds due Plan X participants and/or their spouses at the time Plan X made its termination distributions and constitute portions of their accrued benefits at the time(s) said termination distributions were made.

Furthermore, as noted above, none of the above-referenced class members are receiving payments as an annuity from Plan X.

Thus, with respect to the fourth and fifth ruling requests, we conclude as follows:

4. That distributions from the above-referenced escrow account will be subject to the consent requirement under Code section 411(a)(11). As a result, participant consents must be obtained where

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necessary; and

5. that distributions from the above-referenced escrow account will be subject to the consent requirement under Code section 417. As a result, spousal consents must be obtained where necessary.

This letter is based on the assumption that Plan X referenced herein is or was qualified within the meaning of Code section 401(a) at all times relevant thereto. It also assumes the correctness of all assertions and representations made with respect thereto including, but not limited to, the representation that the escrow account will eventually hold amounts received pursuant to Settlement Agreement X, and that said amounts will be distributed to affected former Plan X participants from the escrow account.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

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.

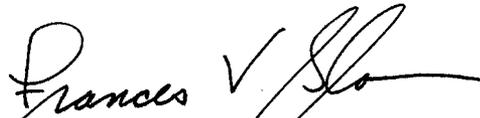
Pursuant to a power of attorney on file with the Service, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact

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 ruling letter  
Notice of Intention to Disclose