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Department of the Treasury  
Internal Revenue Service  
Washington, DC 20224

Uniform Issue List: 408.03-00  
401.06-02

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SE, T L P, R A, T B

Legend:

Taxpayer	=	***
Decedent	=	***
403(b) Plan A	=	*** ***
403(b) Plan B	=	*** ***
403(b) Plan C	=	***
401(a) Plan A	=	*** ***
State A	=	***
Amount 1	=	***
Amount 2	=	***
Amount 3	=	***
Amount 4	=	***

Dear \* \* \*:

This is in response to your request for a private letter ruling, submitted by your authorized representative by letter dated \* \* \*, as supplemented by correspondence dated \* \* \*, concerning the proper rollover treatment of distributions from Decedent's 403(b) Plan A, 403(b) Plan B and 403(b) Plan C under section 403(b)(8) of the Internal Revenue Code ("Code"), from Decedent's 401(a) Plan A under section 402(c), and from all of the above-referenced plans under section 401(a)(31) of the Code.

Your authorized representative has submitted the following facts and representations in support of your ruling request:

Decedent was born on \* \* \* and died on \* \* \*, at age \* \* \*, a resident of State A. Taxpayer, Decedent's surviving spouse, was born on \* \* \*, and is currently over the age of \* \* \*. Decedent maintained 403(b) Plan A, 403(b) Plan B, 403(b) Plan C, and was a participant in 401(a) Plan A at her death. Prior to her death, Decedent named Taxpayer as the sole primary beneficiary of her 403(b) Plan A, 403(b) Plan B, and 403(b) Plan C. Additionally, prior to her death, Decedent named Taxpayer as the sole primary beneficiary of her interest in 401(a) Plan A. We will refer to these plans collectively as "Decedent's Plans."

The value of 403(b) Plan A as of \* \* \* was Amount 1. The value of 403(b) Plan B as of \* \* \* was Amount 2. The value of 403(b) Plan C as of \* \* \* was Amount 3. The value of 401(a) Plan A as of \* \* \* was Amount 4.

Taxpayer, as the primary beneficiary of the Decedent's Plans, proposes to cause the trustees of the respective plans to distribute the accounts held under the Decedent's Plans directly to the trustee of a new IRA ("New IRA") to be established under Code Section 408 in the name of Decedent with Taxpayer as beneficiary. The New IRA will hold only amounts transferred from the Decedent's Plans. Taxpayer will make no contributions to New IRA. Said transfers will occur during calendar year \* \* \*.

Based on the above facts and representations, you request the following letter ruling:

1. That the amounts directly transferred from the Decedent's Plans to New IRA during the year of transfer (2009) may be excluded from Taxpayer's income as rollover contributions from qualified retirement plans to an IRA pursuant to sections 402(c)(9), 403(b)(8), and 401(a)(31) of the Code; and
2. That Taxpayer is able to set up New IRA in Decedent's name with Taxpayer as the beneficiary by not making an election to treat New IRA as Taxpayer's own. As a result of Taxpayer's not electing to treat "New IRA" as his own, the date on which distributions

under Code section 401(a)(9) are required to begin from said "New IRA" shall not be earlier than the date on which Decedent would have attained age 70 ½. pursuant to Code 401(a)(9)(B)(iv).

With respect to your letter ruling request, section 402(c)(1) of the Code provides, generally, that if any portion of an eligible rollover distribution from a section 401(a) 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)(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
  - (ii) for a specified period of 10 years or more,
- B. any distribution to the extent the distribution is required under section 401(a)(9), and
- C. any distribution which is made upon the hardship of the employee.

Section 402(c)(5) of the Code states that for purposes of this title, a transfer to an eligible retirement plan described in clause (i) or (ii) of paragraph (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 section 408(d)(3).

Section 402(c)(8)(B) of the Code defines eligible retirement plan. An IRA described in section 408(a) of the Code is included in the definition.

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 60<sup>th</sup> day following the day on which the distributee received the property distributed.

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

Section 1.402(c)-2 of the regulations, Q&A 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. Thus, a distribution to the surviving spouse of an employee is an eligible rollover distribution if it meets the applicable requirements of section 402(c)(2) and (4) and the associated regulations.

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.

Code section 403(b)(8)(A) provides that if any portion of the balance to the credit of an employee in a 403(b) annuity contract is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)), and the employee transfers any portion of the distribution to an eligible retirement plan described in section 402(c)(8)(B), then the distribution to the extent transferred shall not be includible in gross income for the taxable year in which it was paid.

Code section 403(b)(8)(B) provides that rules similar to the rules of paragraph (2) through (7),(9), and (11) of section 402(c) shall apply for purposes of section 403(b)(8)(A).

Section 403(b)(10) of the Code provides, in relevant part, that any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of the transfer.

Section 1.408-8 of the "Final" Income Tax Regulations, Question and Answer-5, provides that a surviving spouse is the only individual who may elect to treat a beneficiary interest in an IRA as the beneficiary's own account. A surviving spouse makes this election by (re) designating an IRA as an IRA in the name of the surviving spouse as owner rather than as beneficiary. An election will also be considered to have been made by a surviving spouse if either of the following occurs:

1. any required amounts in the account (including any amounts that have been rolled over or transferred, in accordance with the requirements of section 408(d)(3)(A)(i),

- into an IRA for the benefit of such surviving spouse) have not been distributed within the appropriate time period applicable to the decedent under section 401(a)(9)(B), or
2. any additional amounts are contributed to the account (or to the account or annuity to which the surviving spouse has rolled such amounts over, as described above) which are subject, or deemed to be subject, to the distribution requirements of section 401(a)(9)(A). The result of such an election is that the surviving spouse shall then be considered the individual for whose benefit the trust is maintained.

Code section 401(a)(9), in general, sets down the rules governing minimum required distributions from retirement plans qualified with the meaning of Code section 401(a).

Section 401(a)(9)(B) states that when an employee dies before the distribution of the employee's entire interest in a plan (or IRA) has begun, the entire interest of the employee will be distributed within 5 years after the death of such employee. Section 401(a)(9)(B)(iii) states an exception to this rule if any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary, such portion will be distributed over the life of such designated beneficiary, and such distributions begin not later than 1 year after the date of the employee's death or such later date as the Secretary may by regulations prescribe.

Section 401(a)(9)(B)(iv) defines a special rule for the surviving spouse of the employee. If the designated beneficiary referred to in the paragraph above is the surviving spouse of the employee, the date on which the distributions are required to begin shall not be earlier than the date on which the employee would have attained age 70  $\frac{1}{2}$ , and if the surviving spouse dies before the distributions to such spouse begin, this subparagraph shall be applied as if the surviving spouse were the employee.

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) and 403(b) 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.

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 1.401(a)(31)-1 of the Income Tax Regulations, Question and Answer 15, provides, in summary, that for purposes of the Code section 401(a) requirements, a direct rollover described in Code section 401(a)(31) is a distribution and rollover of the eligible rollover distribution and not a transfer of assets and liabilities.

In general, a surviving spouse of an employee/plan participant who is the sole beneficiary of the participant's interest in a plan qualified under Code sections 401(a) or annuity defined in Code section 403(b) may roll over the deceased's plan interest into an IRA described in Code section 408(a). Said recipient IRA may be set up and maintained in the name of the surviving spouse but to so set up and maintain is not mandatory. A surviving spouse may roll over, or accomplish a Code section 401(a)(31) transaction, by contributing amounts distributed from either a Code section 401(a) plan or a Code section 403(b) annuity into an IRA set up and maintained in the name of a decedent.

In this case, Taxpayer was the sole primary beneficiary of Decedent's interests under the Decedent's Plans. His interest in said plans have been set aside as separate, beneficiary interests being maintained for his benefit under the plans. Taxpayer proposes to receive, or be treated as having received, distributions of the full amounts due him from Decedent's Plans. He will then roll over, by means of direct rollovers with the meaning of section 401(a)(31) of the Code, the distributions made from the Decedent's Plan's into New IRA. The "New IRA" will not be set up and maintained in his name, and he does not intend to treat New IRA as his own. As a result, New IRA will be set up and maintained in the name of Decedent to benefit Taxpayer and required distributions under 401(a)(9) will be based on when Decedent would have attained age 70 1/2.

As noted above, Taxpayer's rolling over the distributions from his deceased's wife's qualified retirement plans into an IRA in and of itself need not constitute an election to treat the IRA as his own. However, Taxpayer's intended actions with respect to his beneficial interests in Decedent's Plans do satisfy the requirements of Code sections 402(c)(9), 403(b)(8), and 401(a)(31).

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

1. That the distributions from Decedent's Plans to New IRA may be excluded from Taxpayer's income as rollover contributions from qualified retirement plans to an IRA pursuant to sections 402(c)(9), 403(b)(8), and 401(a)(31) of the Code, and
2. That New IRA may be set up in Decedent's name with Taxpayer as beneficiary and distributions from New IRA under section 401(a)(9) are not required to begin before

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the date on which Decedent would have attained age 70 ½ in accordance with Code section 401(a)(9)(B)(iv).

This ruling letter assumes that the Decedent's Plans either are or were qualified under either section 401(a) or 403(b) (whichever applies) of the Code at all times relevant thereto. It also assumes that the New IRA to be set up by Taxpayer will also meet the requirements of Code section 408(a) at all time relevant thereto.

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, please call \*\*\* (ID) at \*\*\* or fax at \*\*\*.

Sincerely Yours,

Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:

Notice of Intention to Disclose  
Deleted Copy of Ruling