200436017

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUN - 7 2004

UICs: 402.08-00
401.06-02
408.03-00

Legend:

Taxpayer A =

Taxpayer B =

Taxpayer C =

Amount D =

Company E =

Company F =

Society G =

Plan X =

IRA Y =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7:

Date 8:

Dear . :

This is in response to your letter dated , as supplemented by correspondence and communications dated , , and , in which you request, through your authorized representative, letter rulings under sections 402(a), 402(c)(3), and 408(d) of the Internal Revenue Code (the Code), and a letter ruling under section 691 of the Code. The following facts and representations have been submitted, under penalty of perjury, in support of the ruling requested:

Taxpayer A was a participant in Plan X maintained by Company E at her death which occurred on Date 2, Taxpayer A was born on Date 1, . At her death, Taxpayer A was married to Taxpayer B whose date of birth was Date 3, . Taxpayer A's date of death interest in Plan X totaled Amount D.

Taxpayer B was the beneficiary of Taxpayer A's interest in Plan X. On Date 5, , Taxpayer B completed and signed a beneficiary option form with respect to his beneficiary interest in Plan X pursuant to which he requested that said interest be paid as a direct rollover to IRA Y, an individual retirement account which he had opened in his name with Company F on Date 5, . On his Date 5, beneficiary option form, Taxpayer B requested that his beneficiary interest in Plan X be paid by means of a check made payable to his IRA Y account which check was to be mailed to his home address. Your authorized representative asserts that Company E's records indicate that said check was dated Date 7, , and was mailed shortly thereafter to Taxpayer B's home address. Said check was made payable to Company F. However, you represent that said check was never received either by Taxpayer B or by Company F. Furthermore, Company E's records indicate that "As of this date (Date 8,), this check had not been presented for payment". Thus, Taxpayer B's beneficiary interest in Plan X was never contributed to his IRA Y. As of the date of the supplemental material to this ruling request, Taxpayer A's Plan X interest has not been distributed from, and remains in, Plan X.

The Date 5, beneficiary form referenced above also provides that Taxpayer B's estate was to be the beneficiary of his IRA Y.

Taxpayer B died on Date 4, , which was 11 days after Date 5, .

The Schedule I-Annuities, to the Form 760, <u>United States Estate (and Generation-Skipping Transfer) Tax Return</u>, filed with respect to the Estate of

Taxpayer B, lists a number of individual retirement arrangements (collectively IRAs-2) payable to Taxpayer B's estate. A beneficiary designation with respect to these IRAs-2, included in the documentation that accompanied your ruling request, also indicates that Taxpayer B's estate is the beneficiary of his IRAs-2.

Articles III and IV of Taxpayer B's Last Will and Testament, dated Date 6, , provide for certain specific bequests not pertinent to this ruling request. Article V of Taxpayer B's Last Will and Testament provides, in relevant part, that Society G is the residual beneficiary of of Taxpayer B's estate. Article V also provides, in relevant part, for the payment of the remaining " percent ( ) to my nieces and nephews and my wife's nieces and nephews who survive me, in equal shares, or the survivors of them".

It is represented that certain of the IRAs-2 will be paid to the residual beneficiaries of Taxpayer B's estate other than Society G. To satisfy these bequests, transactions will occur whereby certain of the IRAs-2 will be transferred, by means of trustee to trustee transfers, to IRAs set up and maintained in the name of Taxpayer B (Deceased) payable to the Estate of Taxpayer B for the benefit of the residual beneficiaries of Taxpayer B's estate (other than Society G).

Based on the above facts and representations, Taxpayer C, who is the executrix of the estate of Taxpayer B, has requested the following letter rulings:

1. That the transfer(s) of the interests in IRAs-2 of the residual beneficiaries of Taxpayer B's estate (other than Society G) to one or more IRAs qualified within the meaning of Code § 408(a) set up in the name of Taxpayer B (Deceased), payable to the estate of Taxpayer B, and maintained for the benefit of said beneficiary(ies), will not constitute either distribution(s) within the meaning of Code § 408(d)(1) or rollover(s) within the meaning of Code § 408(d)(3); and

2. that the transaction described above in which Company E, the Plan X custodian, issued a check payable to Company F and mailed it to Taxpayer B's address, without more, did not constitute a distribution from Plan X. Furthermore, the transaction involving said check, described above, did not constitute a "rollover" within the meaning of Code § 402(c); and

3. since the amounts payable from Plan X to Taxpayer B as beneficiary of Taxpayer A's interest in Plan X were not distributed to Taxpayer B before his death and remain in Plan X, required minimum distributions with respect to said amounts will be subject to the 5-year rule of Code section 401(a)(9)(B)(ii).

With respect to your first two ruling requests, section 408 of the Code provides rules governing individual retirement arrangements (IRAs). Code section 408(d)(1) provides that except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

Code section 408(d)(3) provides the rules governing rollovers of amounts paid or distributed out of individual retirement accounts or individual retirement annuities.

Code section 408(d)(3)(C) provides that amounts paid or distributed from an "inherited individual retirement account or individual retirement annuity" are not eligible for rollover treatment. An "inherited individual retirement account or individual retirement annuity" is defined as an IRA of a deceased IRA holder obtained by an individual, other than a surviving spouse, by reason of the death of the decedent.

Revenue Ruling 78-406, 1978-2 C.B. 157, provides that the direct transfer of funds from one IRA trustee to another IRA trustee, even if at the behest of the IRA holder (or beneficiary of a deceased IRA holder), does not constitute a payment or distribution to a participant, payee, or distributee as those terms are used in Code § 408(d). Furthermore, such a transfer does not constitute a rollover distribution and contribution.

Section 402(a)(1) of the Code provides that, except as otherwise provided in section 402, any amount paid or distributed out of an employees' trust described in section 401(a) that is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, in the manner provided under section 72 of the Code (relating to annuities).

Section 402(c) of the Code provides rules governing rollovers of amounts from exempt trusts to eligible retirement plans including IRAs. Code section 402(c)(3)(A) provides that, except as provided in subparagraph (B), paragraph (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 402(c)(9) of the Code provides that if any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, the preceding provisions of this subsection shall apply to such distribution in the same manner as if the spouse were the employee.

With respect to your first ruling request, Taxpayer B's Last Will and Testament provides that 75% of his residual estate, including his IRAs-2, shall be paid to certain individuals named therein. To satisfy these bequests, amounts standing in IRAs-2 will be transferred, by means of trustee to trustee transfers, to IRAs set up and maintained in the name of Taxpayer B (Deceased) payable to the Estate of Taxpayer B for the benefit of the residual beneficiaries of Taxpayer B's estate (other than Society G). Amounts transferred will not be paid or distributed to said residual beneficiaries from IRAs-2.

As noted above, Rev. Rul. 78-406 provides for trustee to trustee transfers of IRA amounts that do not constitute IRA distributions. The proposed transactions involving IRAs-2 will take the form of trustee to trustee transfers.

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

1. That the transfer(s) of the interests in IRAs-2 of the residual beneficiaries of Taxpayer B's estate (other than Society G) to one or more IRAs qualified within the meaning of Code § 408(a) set up in the name of Taxpayer B (Deceased), payable to the estate of Taxpayer B, and maintained for the benefit of said beneficiary(ies), will not constitute either distribution(s) within the meaning of Code § 408(d)(1) or rollover(s) within the meaning of Code § 408(d)(3).

With specific respect to your second ruling request, the information presented by Taxpayer C demonstrates that Taxpayer B was the beneficiary of Taxpayer A's interest in Plan X and that, after the death of Taxpayer A, Taxpayer B completed a Company E form in which he sought to have Company E distribute amounts due him under Plan X in a check made payable to Company F, the custodian of his IRA Y, which check was to be sent to his (Taxpayer B's) home address. It is represented that Company E did sent out said check but that the check was not received either by Company F or by Taxpayer B and had never been presented for payment to Company E. Taxpayer B died approximately 11 days after the check was mailed.

The facts presented, primarily Company E's assertion that the check referenced in this ruling request was never presented for payment, indicate that Taxpayer A's Plan X interest remains in Plan X and was never distributed or paid to anyone or any entity including, but not limited to, Taxpayer B or Company F, the custodian of IRA Y. Code § 402(c) requires a payment or distribution in order for there to be a rollover.

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

> 2. that the facts supporting this ruling request indicate that the transaction described herein, in which Company E, the Plan X custodian, issued a check payable to Company F and mailed to Taxpayer B's address, without more, did not result in a distribution from Plan X. As a result, in the absence of a distribution, the transaction involving said check, described above, could not have constituted and did not constitute a "rollover" within the meaning of Code § 402(c).

With respect to your third ruling request, Code § 401(a)(9)(B)(ii) provides, in summary, that a trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), the entire interest of the employee will be distributed within 5 years after the death of the employee.

Code § 401(a)(9)(B)(iii) provides an exception to the 5-year rule of Code section 401(a)(9)(B)(ii). In general, Code § 401(a)(9)(B)(iii) provides that if any portion of the interest of a deceased plan participant (IRA holder) is payable to (or for the benefit of) a designated beneficiary, such portion will be distributed beginning not later than 1 year after the date of the deceased's death (or a later date as prescribed by the Secretary under Regulations) in accordance with regulations over the life of the designated beneficiary (or a period not extending beyond the life expectancy of the beneficiary).

Section 401(a)(9)(C) of the Code provides, in relevant part, that, for purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the calendar year in which the employee (IRA holder) attains age 70 1/2.

Section 401(a)(9)(B)(iv)(I) of the Code provides, in general, that if the designated beneficiary referred to in clause (iii)(I) is the surviving spouse of the employee, then the date on which distributions are required to begin under clause (iii)(III) shall not be earlier than the date on which the employee/plan participant would have attained 70 ½.

Section 401(a)(9)(B)(iv)(II) of the Code provides, in general, that if the designated beneficiary referred to in clause (iii)(I) is the surviving spouse of the employee/plan participant, and the surviving spouse dies before distributions to such spouse begin, this subparagraph shall be applied as if the surviving spouse were the employee.

Final" Income Tax Regulations under Code sections 401(a)(9) and 408(a)(6) were published in the Federal Register at 67 Federal Register 18987-19028 (April 17, 2002), and in the Internal Revenue Bulletin at 2002-19 I.R.B. 852 (May 13, 2002). The Preamble to the "Final" Regulations, in relevant part, provides that the regulations apply for determining required minimum distributions for calendar years beginning after January 1, 2003. The "Final" Regulations may also be used to determine required minimum distributions for the 2002 calendar year.

Section 1.401(a)(9)-3 of the "Final" regulations, Question and Answer-1, describes, in short, the 5-year rule of Code section 401(a)(9)(B)(ii) and the "life expectancy" exception to the 5-year rule described in (B)(iii).

Section 1.401(a)(9)-3 of the "Final" regulations, Q&A-2, provides, in summary, that in order to satisfy the 5-year rule in section 401(a)(9)(B)(ii), the employee's entire interest must be distributed by the end of the calendar year that contains the fifth anniversary of the date of the employee's death.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-4(a), provides, in relevant part, that in order to be a designated beneficiary, an individual must be a beneficiary as of the date of (the employee's) death. Generally, an employee's designated beneficiary will be determined based on the beneficiaries designated as of the date of death who remain beneficiaries as of September 30 of the calendar year following the calendar year of death.

Section 1.401(a)(9)-3 of the "Final" regulations, Q&A-3(b), provides, in relevant part, that if the surviving spouse of an employee/plan participant is the sole designated beneficiary of said participant or IRA holder, distributions to said spouse must commence on or before the later of-(1) the end of the calendar year immediately following the calendar year in which the employee died; and (2) the end of the calendar year in which the employee would have attained age 70 ½.

Section 1.401(a)(9)-3 of the "Final" regulations, Q&A-5, provides, in relevant part, that if the surviving spouse of an employee/plan participant is the sole designated beneficiary of said participant or IRA holder and dies after the employee/plan participant but before distributions to such spouse have begun under sections

401(a)(9)(B)(iii) and (iv), the 5-year rule in section 401(a)(9)(B)(ii) shall be applied as if the surviving spouse were the participant/IRA holder.

In this case, Taxpayer B, Taxpayer A's surviving spouse, was the sole designated beneficiary of Taxpayer A's interest in Plan X. Although taxpayer B survived Taxpayer A, Taxpayer B died prior to the point at which distributions to him from Plan X were required to begin. Taxpayer B did not name or designate a beneficiary of his interest in Plan X. Thus, pursuant to the above cited sections of the Code and "Final" Regulations, Taxpayer B's beneficiary interest in Plan X is subject to the 5-year rule in section 401(a)(9)(B)(ii).

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

3. since the amounts payable from Plan X to Taxpayer B as beneficiary of Taxpayer A's interest in Plan X were not distributed to Taxpayer B before his death and remain in Plan X, required minimum distributions with respect to said amounts will be subject to the 5-year rule of Code section 401(a)(9)(B)(ii).

This letter ruling assumes that IRAs-2 either have met, are meeting, or will meet the requirements of Code section 408(a) at all times relevant thereto. It also assumes that Plan X either was or is qualified within the meaning of Code section 401(a) at all times relevant thereto. Finally, it assumes that Taxpayer A's Plan X interest remains in Plan X's trust as asserted.

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 this office, the original of this letter ruling is being sent to your authorized representative.

Pursuant to your request, the letter ruling you requested under Code section 691 will be issued under separate cover.

If you wish to inquire about this ruling, please contact ,(I.D. #), at ((phone) or (FAX). Please address all correspondence relating to this letter ruling to SE:T:EP:RA:T:3.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Manager, Technical Group 3
Employee Plans

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose