



COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200634057

UIL: 402.08-00

MAY 18 2006

LEGEND:

T: EP: RA: T3

Taxpayer A:

Taxpayer B:

Plan X:

Amount 1:

Dear _____ :

This is in response to the _____, request for a private letter ruling submitted by your authorized representative on your behalf, in which you request rulings under section 402(c) of the Internal Revenue Code ("Code"). The following facts and representations have been submitted in support of your ruling request.

Taxpayer A died on April 18, 2004. Taxpayer A's date of birth was November 18, 1932. He was survived by his wife, Taxpayer B, whose date of birth was August 13, 1948. At the time of his death, Taxpayer A was a participant in Plan X, a money purchase pension plan which your authorized representative has asserted is qualified under section 401(a) of the Code, and the trust of which is tax-exempt under section 501(a). At the time of his death, Taxpayer A's account balance in Plan X was approximately Amount 1. Taxpayer A named Taxpayer B as the sole beneficiary of his Plan X account balance. Taxpayer A attained age 70 ½ in 2003 and, prior to his death, had begun to receive from Plan X the minimum required distributions required by Code section 401(a)(9). Taxpayer A died on April 18, 2004 and it has been asserted that the required distribution for the year of death has been made.

Plan X continues to maintain an account in the name of Taxpayer A. Additionally, Taxpayer B is a participant in Plan X and also has an account balance under Plan X. Taxpayer B now wishes to directly roll over, by means of a trustee to trustee transfer, Taxpayer A's account balance in Plan X to Taxpayer B's account in Plan X to the extent Taxpayer A's Plan X account balance exceeds amounts required to be distributed in accordance with the mandate of Code section 401(a)(9) for calendar years 2005 and

2006. Said transaction is intended to be completed no later than December 31, 2006.

Relevant provisions of Plan X permit Taxpayer B to transfer, or roll over, Taxpayer A's interest in Plan X into an account in the name of Taxpayer B in said Plan X.

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

1. That the amounts directly transferred from Taxpayer A's account in Plan X to Taxpayer B's account in Plan X may be excluded from Taxpayer B's income as a rollover contribution from a Code section 401(a) qualified retirement plan to another Code section 401(a) qualified retirement plan pursuant to sections 402(c)(9) and 401(a)(31) of the Code; and

2. That, with respect to the amounts transferred from Taxpayer A's Plan X account into Taxpayer B's Plan X account, no distribution from Plan X to Taxpayer B is required to be made prior to Taxpayer B's required beginning date, as defined in Code section 401(a)(9)(C), in accordance with the rule of Code section 401(a)(9)(A).

With respect to your first ruling request, section 402(a) of the Code provides that, except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 (relating to annuities).

Section 402(c)(1) of the Code provides, generally, that if any portion of an eligible rollover distribution from a qualified trust 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 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)(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) of the Code qualified retirement plan, (iv) an annuity plan described in section 403(a), (v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and (vi) an annuity contract described in section 403(b).

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 60th 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 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.

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) of the Code.

The term "eligible retirement plan" when used in section 401(a)(31) of the Code includes a defined contribution plan that permits the acceptance of rollover distributions.

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.

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With respect to your ruling request, Code section 401(a)(9)(A) provides, in general, that a trust will not be considered qualified unless the plan provides that the entire interest of each employee—

- (i) will be distributed to such employee not later than the required beginning date, or
- (ii) will be distributed, beginning not later than the required beginning date, over the life of such employee or over the lives 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) 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 attains age 70 ½ or retires in the case of a employee who is not a five percent owner.

In short, for calendar years after the effective date of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTTRA), including calendar year 2006, a surviving spouse who is the beneficiary of a deceased qualified plan participant and who is entitled to receive amounts from said decedent’s plan account may roll over, or directly transfer in a transaction that complies with Code section 401(a)(31), amounts attributable to said decedent into her account in a qualified plan in which she participates.

In this case, Taxpayer B, the surviving spouse of Taxpayer A, will receive, or be treated as having received, a distribution of the full amount due her as sole beneficiary from Taxpayer A’s Plan X account. She will then accomplish a transfer, by means of a direct rollover within the meaning of section 401(a)(31) of the Code, of Taxpayer A’s Plan X account balance into her own account in Plan X. We believe that such a transaction falls within section 402(c)(9) and within the purview of Code section 401(a)(31).

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

1. That the amounts directly transferred from Taxpayer A’s account in Plan X to Taxpayer B’s account in Plan X may be excluded from Taxpayer B’s income as a rollover contribution from a Code section 401(a) qualified retirement plan to another Code section 401(a) qualified retirement plan pursuant to sections 402(c)(9) and 401(a)(31) of the Code.

With respect to your second ruling request, after the transaction referenced in the initial ruling request is completed, for purposes of Code section 401(a)(9), the distribution requirements of section 401(a)(9) will apply to such transferred amounts as if the spouse were the employee. In short, said transferred amounts will be subject to the requirements of Code section 401(a)(9)(A) and the distribution of same

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must begin no later than Taxpayer B's required beginning date as that term is defined in Code section 401(a)(9)(C).

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

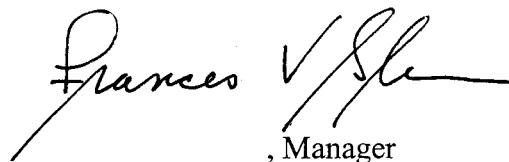
2. That, with respect to the amounts transferred from Taxpayer A's Plan X account into Taxpayer B's Plan X account, no distribution from Plan X to Taxpayer B is required to be made prior to Taxpayer B's required beginning date, as defined in Code section 401(a)(9)(C), in accordance with the rule of Code section 401(a)(9)(A).

These letter rulings are based on the assumption that Plan X is qualified under section 401(a) of the Code and its trust tax-exempt under section 501(a) at all times relevant thereto. The letter rulings are also based on the assumption that the direct rollover of amounts from Taxpayer A's account in Plan X to Taxpayer B's account in Plan X meets all of the rules applicable to direct rollovers found in sections 402 and 401(a)(31) of the Code and is consistent with the provisions of Plan X.

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

The author of this ruling is _____ who may be reached at _____

Sincerely yours,



, Manager
Employee Plans Technical Group

Enclosures:

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Form 437