Internal Revenue Service

Department of the Treasury

200034031

Washington, DC 20224

UIL: 401.06-00

Contact Person:

Telephone Number:

In Reference to:

T:EP:RA:T3

Date:

MAY 30 2000

LEGEND:

Taxpayer A:

Company B:

Taxpayer C:

Trust D:

Plan X:

Date 1:

Date 2:

Dear

This is in response to the , letter, as supplemented by correspondence dated , submitted on your behalf by your authorized representative, in which you request a letter ruling with respect to your section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) election. The following facts and representations support your ruling request.

Taxpayer A is a participant in Plan X which is sponsored by Company B. Your authorized representative asserts on your behalf that Plan X is a defined contribution profit-sharing plan that is qualified within the meaning of section 401(a) of the Internal Revenue Code and that its trust is tax-exempt under Code section 501(a). Section 10.3 of Plan X authorizes in-service distributions to plan participants who have attained age 60 as long as the amount of the in-service distributions is at least $1,000.

On Date 1, Taxpayer A signed a beneficiary designation with respect to his interest in Plan X pursuant to which he named his wife, Taxpayer C, as the primary beneficiary thereof and the trustees of Trust D as the secondary beneficiary (ies) thereof.

194

On Date 2, Taxpayer A signed a "Distribution Election" with respect to his interest in Plan X which referenced section 242(b)(2) of TEFRA and which was intended to serve as an election under said TEFRA section. Taxpayer A's Date 2 form mentioned Plan X and indicated that Taxpayer A intended to have lifetime distributions from Plan X commence at his retirement even if retirement came after his attainment of age 70 ½. Furthermore, the form indicated that Taxpayer A intended to receive lifetime, post retirement, distributions in a lump sum. Additionally, the Date 2 Form referenced his Date 1 beneficiary designation and indicated an intent on the part of Taxpayer A to not revoke his earlier Plan X beneficiary designation.

Taxpayer A's Date 1 beneficiary designation and his Date 2 "TEFRA section 242(b)(2) election were signed by Taxpayer A prior to December 31, 1983.

Taxpayer A had an account balance under Plan X as of December 31, 1983.

Taxpayer A intends to receive an in-service distribution from Plan X no later than December 31, 2000. In accordance with the terms of Plan X, Taxpayer A's in-service distribution will be in an amount of at least $1,000.

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

> That Taxpayer A's proposed calendar year 2000 in-service distribution from Plan X will not revoke, alter, amend or otherwise adversely affect his Date 2 TEFRA section 242(b)(2) election.

With respect to your ruling request, Section 401(a)(9) of the Code was amended by section 242 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248) (1982-2 C.B. 462) (TEFRA), and was further amended by section 521 of the Tax Reform Act of 1984 (Pub. L. 98-369) (TRA'84) and by sections 1121 and 1852 of the Tax Reform Act of 1986 (Pub. L. 99-514) (TRA'86). Section 242(b)(2) of TEFRA provided a transition rule that was not affected by the later amendments to section 401(a)(9).

Section 242(b)(1) of TEFRA provides that amendments to section 401(a)(9) of the Code made by section 242(a) of TEFRA shall apply to plan years beginning after December 31, 1983. However, section 242(b) of TEFRA provides the following transitional rule:

> TRANSITION RULE: A trust forming part of a plan shall not be disqualified under paragraph (9) of section 401(a) of the Internal Revenue Code of 1954, as amended by subsection (a) by reason of distributions under a designation (before January 1, 1984) by any employee of a method

195

of distribution:

(A) which does not meet the requirements of such paragraph (9), but

(B) which would not have disqualified such trust under paragraph (9) of section 401(a) of such Code as in effect before the amendment made by subsection (a).

Notice 83-23, 1983-2 C.B. 418, provides guidance with respect to distributions that may be made by a qualified plan under the transition rule of section 242(b)(2) of TEFRA. In order for the transitional rule in section 242(b)(2) of TEFRA to apply to a distribution from a qualified trust, the distribution must be made in accordance with the following requirements as set forth in Notice 83-23:

(1) The distribution by the trust is one which would not have disqualified the trust under section 401(a)(9) of the Code as in effect immediately prior to the effective date of 242(a) of TEFRA.

(2) The distribution is in accordance with a method of distribution designated by the employee whose interest in the trust is being distributed or, if the employee is deceased, by a beneficiary of such employee.

(3) Such designation is in writing, is signed by the employee or the beneficiary, and is made before January 1, 1984.

(4) The employee whose interest in the trust is being distributed has accrued a benefit under the plan of which the trust is a part as of December 31, 1983.

(5) The method of distribution designated by the employee specifies the following:

(a) the form of the distribution (lump sum, level dollar annuity, formula annuity, specified percentage payment per year, etc.),

(b) the time at which distributions will commence (upon retirement, at a stated age, etc.),

(c) the period over which distributions will be made (over the employee's life expectancy, over a stated number of years, etc.), and

(d) in the case of any distribution upon the employee's death, the beneficiaries of the employee listed in order of priority.

The designation must, in and of itself, provide sufficient information to fix the time, and the formula for the definite determination of plan payments. The designation must be complete and not allow further choice.

A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the information described in items (5)(a)-(d) above with respect to the distributions to be made upon the death of the employee.

If a designation made in accordance with the above requirements is revoked by an employee or, if the employee is deceased, by his beneficiary, subsequent to December 31, 1983, the transitional rule in section 242(b)(2) of TEFRA will not apply to the distribution and the employee's interest must be distributed in accordance with section 401(a)(9) as amended by section 242(a) of TEFRA. Any change in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).

In this case, Taxpayer A, through his Date 1 beneficiary designation and his Date 2 Distribution Election, made a valid TEFRA section 242(b)(2) election pursuant to which distributions from Plan X must begin upon Taxpayer A's retirement from Company C which sponsors Plan X. Taxpayer A proposes to receive in-service distribution from Plan X in an amount of at least $1,000.

The facts of this ruling request indicate that although Taxpayer A intends to receive an in-service distribution from Plan X in an amount of at least $1,000, his remaining Plan X account balance will continue to be subject to his TEFRA section 242(b)(2) election. Thus, Taxpayer A's in-service distribution from Plan X will not accelerate his "required beginning date" for the distribution of all other Plan X benefits.

Taxpayer A's proposed in-service distribution from Plan X is not inconsistent with his TEFRA section 242(b)(2) election pursuant to which distributions of his Plan X account balance will and must be made upon his retirement from Company C in a lump sum.

Thus, with respect to your ruling request, the Service concludes as follows:

That Taxpayer A's proposed calendar year 2000 in-service distribution from Plan X will not revoke, alter, amend or otherwise adversely affect his Date 2 TEFRA section 242(b)(2) election.

This letter ruling assumes that Plan X is and has been qualified within the meaning of Code section 401(a) and its trust exempt from tax under Code section 501(a) at all times relevant thereto.

This ruling is directed solely 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.

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

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Manager,
Employee Plans
Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of letter ruling
Form 437