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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Contact Person:

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Telephone Number:

In Reference to: T:EP:RA:T1

Date:

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Legend:

Taxpayer A.....

Company B.....

Plan X.....

Date 1.....

Date 2.....

Date 3.....

Year 4.....

Date 5.....

Date 6.....

Date 7.....

Dear

This is in response to a letter dated December 16, 2000, submitted on your behalf by your authorized representative requesting a letter ruling regarding your election under section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). The following facts and representations were submitted on your behalf.

Taxpayer A is a participant in Plan X which is sponsored by Company B. On Date 1, Taxpayer A, signed a beneficiary designation with respect to his interest in Plan X pursuant to which he named his wife the primary beneficiary thereof. On Date 2, Taxpayer A signed an election to receive benefits at the time of actual retirement rather than at age 70 and 1/2. Taxpayer A's Date 2 election referenced Plan X. On Date 3, Taxpayer A signed an election to receive benefits from Plan X on retirement or to have them paid on death in a lump sum payment

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under pre-TEFRA provisions. Dates 1, 2 and 3 are dates prior to January 1, 1984. Taxpayer A had an accrued benefit in Plan X as of December 31, 1983.

Beginning with Year 4, Taxpayer A began taking in-service distributions from Plan X for a period of six years. On Date 5, Date 6, and again on Date 7, Taxpayer A implemented new beneficiary designations, changing his designated beneficiary under Plan X. The form of distribution remained a lump sum and was not changed by the new designations. Taxpayer A is still employed by Company B.

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

(1) that Taxpayer A's in-service distributions from Plan X beginning in 1990 did not revoke, alter, amend or otherwise adversely affect his TEFRA 242(b)(2) election made on Dates 1, 2 and 3; and

(2) that Taxpayer A's beneficiary changes on Date 5, Date 6, and Date 7 did not revoke, alter, amend, or otherwise adversely affect his TEFRA 242(b)(2) election made on Dates 1, 2 and 3.

With respect to ruling request (1), section 401(a)(9) of the Internal Revenue Code (the "Code") was amended by section 242 of 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 Code section 401(a)(9) 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 of distribution:
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> (A) which does not meet the requirements of such paragraph (9), but
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> (B) which would not have disqualified such trust under paragraph (9) of section 401(a) of such Code as in effect before the amendment 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) 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:

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(1) The distribution by the trust is one which would not have disqualified the trust under Code section 401(a)(9) 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.

If a designation made in accordance with the above requirement is revoked by an employee 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 Code 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 made a valid TEFRA section 242(b)(2) election because the election, made prior to January 1, 1984, was in writing, identified the time at which distributions will

commence (death or actual retirement, and specified the form of distribution (a lump sum). The fact that the election was made on Dates 1, 2 and 3 on three separate election forms, is immaterial since the three writings, when read together, meet the requirements applicable to section 242(b) elections. Although Taxpayer A received in-service distributions from Plan X, 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 distributions did not accelerate his required beginning date for the distribution of remaining Plan X benefits. Accordingly, we conclude with respect to ruling request (1) that Taxpayer A's in-service distributions from Plan X beginning on Date 4 for a period of six years did not revoke, alter, amend or otherwise adversely affect his TEFRA 242(b)(2) election made on Dates 1, 2 and 3.

With regard to ruling request number (2), because Taxpayer A's benefits under Plan X are to be distributed in a lump sum pursuant to the election made on Date 3, Taxpayer A's changes in beneficiaries on Dates 5, 6 and 7 merely substituted one beneficiary for another and did not in any way alter the period over which distributions are to be made under the designation, directly or indirectly. Accordingly, we rule with respect to ruling request number (2), that Taxpayer A's beneficiary changes on Dates 5, 6, and 7 did not revoke, alter, amend or otherwise adversely affect his TEFRA 242(b)(2) election made on Dates 1, 2 and 3.

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

This ruling is directed solely to the taxpayer who requested it. Code section 6110(k)(3) 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 ruling is being sent to your authorized representative.

Sincerely yours,

John Swieca
Manager, Employee Plans
Technical Group 1
Tax Exempt and Government
Entities Division

cc:

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