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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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UIC: 402.00-00
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LEGEND:

Company A:

Court B:

Fund F:

Plan X:

Date 1:

Date 2:

Date 3:

Date 4:

Sum 1:

This is in response to the , letter filed by your authorized representative on your behalf, as supplemented by correspondence dated , in which you request several letter rulings under section 402 of the Internal Revenue Code. The following facts and representations support your ruling request.

On Date 1, Company A and Plan X were named as defendants in a class action filed by participants or former participants of Plan X or a predecessor plan. Plan X is a defined benefit, pension, plan that your authorized representative asserts is qualified within the meaning of Code section 401(a).

On Date 2, Court B certified the class ("Class") as containing persons who "...received lump sum retirement benefits from Plan X or a predecessor retirement plan between January 1, 1992 and the date of judgment in this matter excluding (i) persons who received less than $25,000 and who were age 65 or older on the date(s) of payment; and (ii) all individual defendants named herein..." Additionally, persons who are or were eligible to be members of the class in a related class action or who received or are eligible to receive a distribution from the settlement fund therein are not members of the class in

279

200213032

this case. Your authorized representative asserts, on your behalf, that approximately 800 Plan X participants are members of the class.

The class action alleged that affected Plan X participants, who are members of the class, received lump sum retirement benefits which were miscalculated. The miscalculation involved, in part, use of a higher Pension Benefit Guarantee Corporation (PBGC) discount rate than that required under the terms of Plan X or a predecessor plan.

The class action alleged that, in improperly computing the single sum distributions of the class members, the defendants violated provisions of the Employees Retirement Income Security Act of 1974, as amended (ERISA), committed breaches of fiduciary duty, breaches of contract and acts of common law conversion, and violated terms of Plan X and of its predecessor plans. Specifically, the plaintiffs alleged, in part, that the defendants breached their fiduciary duties to members of the class (1) in the way they computed the amount(s) of their single sum distributions, and (2) by providing inaccurate information to members of the class concerning the way in which the single sum payments were calculated. The complaint specifically alleged that lump sum distributions of affected class members were computed using a PBGC rate of interest not called for under relevant plan terms.

On Date 3, a settlement ("Settlement") was reached between members of the plaintiff class and all named defendants including Company A and Plan X.

The Settlement has been approved by Court B, a court having jurisdiction over the above-referenced class action suit.

Under the terms of the Settlement, within three business days following the date when Court B enters the Preliminary Order Approving settlement, the defendants in the class action suit shall pay in immediately available funds the amount of Sum 1 plus simple interest at the rate of 5.00 percent per annum from Date 4 into an escrow account, Fund F, such funds to thereafter be held and disbursed pursuant to the Escrow Instructions and Court Order.

The settlement agreement provides, in pertinent part, that each "Eligible Class Member's" lump sum benefit shall: (i) employ 100% of the applicable Pension Benefit Guaranty Corporation immediate and deferred rates, (ii) use age 65 benefits, including minimum benefits, and (iii) include the applicable post-retirement death benefit.

Your authorized representative has asserted that the settlement funds were paid out of the assets of Company A and not from the assets held in Plan X's trust. Currently the balance of settlement funds, after payment of litigation costs and expenses, remains in Fund F. Under the Settlement, Fund F is responsible for calculating and disbursing amounts payable to class members. The Settlement further provides that Fund F will make distributions in the same manner and form as specified under the terms of Plan X or a predecessor plan as alleged by the plaintiff class and as provided under the Date 3 settlement.

230

Your authorized representative has asserted on your behalf that Company A either is, or, at times relevant to this ruling request, was a sponsor of Plan X. Additionally, Plan X and its predecessor plans are qualified under Code section 401(a) and their trusts exempt under Code section 501(a). Furthermore, your authorized representative asserts that Plan X and its related trust is still in existence and has not been terminated.

Additionally, your authorized representative has asserted on your behalf that the funds deposited in Fund F pursuant to the Date 3 Settlement Agreement, net of expenses, will be disbursed to the affected class members.

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

(1) Distributions from Fund F qualify for treatment in accordance with the provisions of Code section 402;

(2) distributions from Fund F to claimants thereof are eligible for tax-deferred rollover treatment pursuant to Code section 402(c); and

(3) the 60-day rollover period prescribed in Code section 402(c)(3) commences from the date a distribution from Fund F is received by the payee or distributee thereof.

With respect to your ruling requests, Code section 402(a)(1) provides that, except as otherwise provided in this section, any amount actually distributed to any distributee by an 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).

Code section 402(c)(1) provides that, if an employee transfers any portion of an eligible rollover distribution into an eligible retirement plan, the amount so transferred shall not be includible in income for the taxable year in which paid.

Code section 402(c)(4) provides that an "eligible rollover distribution" is a distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust; except that such term shall not include-

(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, and

(B) any distribution to the extent such distribution is required under section 401(a)(9).

Code section 402(c)(8)(B) defines an eligible retirement plan to include, an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b); a qualified trust, and an annuity plan described in Code section 403(a).

Code section 402(c) 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.

In this case, the members of the plaintiff class in the class action referenced above were entitled to receive lump sum distributions from Plan X or a predecessor plan. The class members received single sum distributions which their suit, referenced above, alleged were less than the distributions to which they were entitled under the provisions of Plan X or a predecessor plan. The settlement proceeds represent amounts to which the class members assert they were entitled under the provisions of Plan X or a predecessor plan.

Fund F was created under an order entered by Court B as part of the settlement resolving the above-referenced class action for the sole purposes of holding additional amounts due, and making distributions to, affected participants in Plan X or a predecessor plan who were members of the class. Amounts in Fund F were transferred from the assets of Company A, a defendant in the class action.

Code section 402(c), by its terms, refers to distributions made from a Code section 401(a) retirement plan. The distributions in this case, which will be made from Fund F, are equal to the amounts due affected plan participants under plan terms. Affected Plan X, or predecessor plan, participants were entitled to receive single sum distributions in amounts fixed by relevant plan terms and computed with reference to interest assumptions used to compute the plan distributions. Affected plan participants did not receive correct distributions from the plan(s). The proposed distributions from Fund F are intended to make up said shortfalls.

However, as noted above, the settlement proceeds which will be used to make the distributions were funded from the general assets of Company A and not from funds held in the trust of Plan X. As such, under the facts presented in this case, it is not appropriate to treat the Fund F distributions as being made from either Plan X or a predecessor plan, since, for purposes of Code section 402, it is not appropriate to deem Fund F as holding Plan X or predecessor plan funds and as constituting an extension of Plan X or a predecessor plan and its related trust.

Based on the facts presented in this particular case, Fund F will not be treated as holding assets of Plan X. Thus, we believe that it is not

232

200213032

appropriate for distributions from Fund F to qualify for Code section 402(c) treatment.

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

(1) Distributions from Fund F will not qualify for treatment in accordance with the provisions of Code section 402;

(2) distributions from Fund F to claimants thereof are not eligible for tax-deferred rollover treatment pursuant to Code section 402(c); and

(3) based on our response to the second ruling request, the third ruling request is moot.

This letter ruling was authored by
who may be reached at

Pursuant to a power of attorney on file in this office, copies of this letter ruling are being sent to your authorized representative(s).

Sincerely yours,

Frances V. Sloan

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

Enclosures:

Deleted copy of letter ruling
Form 437