Internal Revenue Service

Significant Index No: 402.08-00

Department of the Treasury

Washington, DC 20224

Person to Contact:

199905037

Telephone Number:

Refer Reply to:
OP:E:EP:T:3
Date:

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LEGEND:

Company A:

Company B:

Company C:

Company D:

Court E:

Fund F:

Individual G:

Plan W:

Plan X:

Plan Y:

Plan Z:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

199905037

Date 6:

Date 7:

Month 8:

Ladies and Gentlemen:

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 W were named as defendants in a class action filed by participants or former participants of Plan W. On Date 2, Court E certified the class as containing approximately persons who received lump sum retirement benefits from Plans W through Z except those individuals who received less than $25,000 and who were age 65 or older on the date(s) of payments.

On Date 3, plaintiffs filed an amended class action complaint joining Plans X, Y, and Z and their respective corporate sponsors, Companies B, C, and D as defendants. Orders entered by Court E refer to Plans W through Z as jointly administered pension plans.

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), and also committed breaches of contract and acts of common law conversion. 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.

On Date 4, Court E dismissed all of the claims of the class members against the defendants except for those claim(s) based on violations of ERISA. During Month 8, the parties to the suit reached a settlement relating to the alleged violation(s) of ERISA.

Under the terms of the settlement, Plans W, X, Y, and Z were required to increase the single sum payments made to members of the class by $, plus interest at the rate of 5.56% per annum accrued from Date 5, the effective date of the proposed settlement, until Date 7, the date the settlement proceeds were placed into escrow. The settlement amount was fully funded out of the assets of Plans W through Z, and no portion of the settlement amounts came from the general assets of Companies A through D. As of the date of this ruling request, the settlement funds remain in escrow in Fund F created under the Date 6 settlement agreement, and are invested in United States Treasury securities. Fund F is responsible for recalculating and disbursing increased pension benefits to affected class members. Fund F will make distributions in the same manner and in the same form as specified under relevant provisions of Plans W through Z.

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 Plans W through Z. Additionally, your authorized representative asserts that Plans W through Z are qualified under Code section 401(a) and their trusts exempt under Code section 501(a). Furthermore, your authorized representative asserts that Plans W through Z, and their related trusts, are still in existence and have not been terminated.

Additionally, Individual G, an officer of Company A, has asserted that Fund F was intended to constitute an extension of the pension plans (Plans W through Z) which are defendants in the above referenced class action. Furthermore, Individual G has asserted that Fund F was established solely to pay benefits to plan participants who are members of the class referenced above. Individual G has also asserted that no Form 1099Rs were issued to members of the class referenced above in conjunction with the establishment of Fund F. Finally, Individual G has asserted that it is the responsibility of the Administrative Agents of Fund F to issue Form 1099Rs when payments are made from Fund F to affected class members/plan participants.

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 Plans W through Z. 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 Plans W through Z. The settlement proceeds represent amounts to which the class members assert they are entitled under the provisions of Plans W through Z, and, as noted above, the settlement proceeds were paid into Fund F out of assets held by the trusts of Plans W through Z.

Code section 402(c), by its terms, refers to distributions made from a Code section 401(a) retirement plan. The distributions in this case will be made from Fund F which is an extension of Plans W through Z. Fund F was created under an order entered by Court E 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 Plan participants in Plans W through Z who were members of the class. Amounts in Fund F were transferred from the separate trusts of Plans W through Z, and in the absence of the conduct alleged in the class action complaint, would have been paid to participants in Plans W through Z, which your authorized representative asserts are Code section 401(a) plans, directly from the trusts thereof.

Based on the facts presented in this particular case, Fund F will be treated as holding assets of Plans W through Z. Thus, we believe that it is 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 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.

This ruling letter assumes that Plans W through Z either are or were qualified under Code section 401(a) at all times relevant thereto. It also assumes that each member of the plaintiff class referenced herein received a single sum distribution from Plan W, X, Y or Z as asserted. Finally, it assumes that Fund F consists solely of amounts transferred from the trusts of Plans W through Z and earnings thereon.

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 Branch 3

Enclosures:

Deleted copy of letter ruling
Form 437