Internal Revenue Service

Department of the Treasury

Washington, DC 20224

199941050

SIN #: 401.11-00

Contact Person:

Telephone Number: OP:E:EP:T:2

In Reference to:

Date: JUL 21 1999

LEGEND:

Individual A -

Individual B -

Plan C -

Trust D -

IRA E -

Dear

This is in response to a letter dated November 3, 1998, as revised by letters dated January 14, 1999, and May 18, 1999, submitted on your behalf by your authorized representative, in which a private letter ruling was requested under section 402 of the Internal Revenue Code ("Code"). Your authorized representative submitted the following facts and representations:

Individual A died testate on March 27, 1998. Individual B is his surviving spouse.

Individual A was a participant in Plan C, which meets the requirements of section 401(a) of the Internal Revenue Code. Trust D is the primary beneficiary of Individual A's interest in Plan C.

Section 1.01 of Trust D named Individuals A and B as the Co-Trustees of Trust D. Section 9.01 of Trust D provides that if either of the trustees named in Article first shall for any reason cease to act as trustee, then the other trustee shall act as sole trustee.

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Upon the death of Individual A, Trust D is required to be divided into two separate trusts, designated as the Survivor's Trust and the Residual Trust. Individual B is the sole beneficiary of the Survivor's Trust and the sole income beneficiary of the Residual Trust. Trust D provides that Individual B is the sole trustee of the Survivor's Trust and the Residual Trust. Trust D requires Individual B to divide Trust D and allows her to determine which assets are to be allocated to the Survivor's Trust and the Residual Trust. Trust D further states that all income from the Survivor's Trust shall be distributed as necessary to Individual B and that Individual B may withdraw all or any porion of the Survivor's Trust assets by written request. Finally, section 6.03 of Trust D provides that on the death of the deceased spouse, Individual A, the surviving spouse, Individual B, shall have the power to amend, revoke or terminate the Survivor's Trust. Furthermore, pursuant to section 6.03, on revocation or termination of the Survivor's Trust, all its assets shall be delivered to the surviving spouse, Individual B.

In accordance with the terms of Trust D, Individual B, as the trustee, selected the assets for the Survivor's Trust. Trust D has sufficient funds to allocate the required amount to the Residual Trust and allocate Individual A's entire interest in Plan C to the Survivor's Trust.

As trustee, Individual B has allocated 100% of Trust D's interest in Individual A's Plan C benefit to the Survivor's Trust. Individual B then revoked the Survivor's Trust as to Individual A's benefit in Plan C and allocated the interest to herself as the sole beneficiary of the revocable Survivor's Trust. Individual B, promptly upon receipt by the Survivor's Trust of Individual A's assets in Plan C, transferred such assets to the trustee of her own Individual Retirement Account, IRA E, to the extent Plan C assets were in excess of the applicable required minimum distribution as defined in section 401(a)(9) of the Internal Revenue Code.

Based on the above, you request the following letter ruling:

> That Individual B will be treated as acquiring the proceeds of Individual A's interest in Plan C as a surviving spouse of a deceased participant, and not be treated as acquiring such interest from Trust D.

Section 402(a) of the Internal Revenue Code provides that any amount actually distrusted to any distributee by any

employees' trust described in section 401(a) which is exempt from tax under section 501(a) of the Code is taxable to the distributee in the taxable year in which it is distributed.

In general, section 402(c)(1) of the Code provides that section 402(a) of the Code does not apply if the distributee transfers any portion of the property received in such distribution to an Eligible Retirement Plan. Section 402(c)(8)(B) defines an Eligible Retirement Plan and includes in its definition individual retirement accounts described in section 408(a) of the Code.

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.

Section 401(a)(31)(B) of the Code provides that subparagraph (A) shall apply only to the extent that the eligible rollover distribution would be includible in gross income if not transferred as provided in subparagraph (A) (determined without regard to sections 402© and 403(a)(4)).

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 IRAs defined in section 408(a) and 408(b) of the Code.

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 402(c)(9) of the Code states that if any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, section 402(c)of the

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Code shall apply to such distribution in the same manner as if the spouse were the employee.

Thus, pursuant to section 402(c)(9) of the Code, a surviving spouse who acquires proceeds from a qualified plan by reason of the death of his or her spouse, may elect to treat those proceeds as his or her own and roll them over into an individual retirement account established in his or her name.

Generally, if a decedent's qualified plan proceeds pass through to a third party, e.g. a trust, and then are distributed to the decedent's surviving spouse, said spouse will be treated as acquiring them from the third party and not from the decedent. Thus, generally, the surviving spouse will not be eligible to roll over the IRA proceeds into his or her own IRA.

However, if the trustee of a trust which is the beneficiary of a deceased participant's interest in a qualified plan is the surviving spouse of said deceased participant, and the surviving spouse has both the power to allocate the qualified plan interest to a subtrust of the trust of which she is the sole beneficiary, and also the power to terminate the subtrust which termination results in the qualified plan interest being paid to the surviving spouse, then for purpose of section 402(c)(9,) the Internal Revenue Service will treat the surviving spouse as having acquired the IRA proceeds from the decedent and not from the trust.

In this case, Individual B, Individual A's surviving spouse, is the sole trustee of Trust D and the sole beneficiary of the Survivor's Trust. Under the terms of Trust D, all of the income from the Survivor's Trust shall be distributed as necessary to Individual B and she may revoke or terminate the Survivor's Trust at will. As trustee, she has allocated all of Individual A's interest in Plan C to the Survivor's Trust of Trust D and subsequently terminated the Survivor's Trust with respect to the Plan C interest. As a result of said termination, the Plan C interest became payable to Individual B. Under this set of circumstances, the Service believes that it is appropriate to treat Individual A's interest in Plan C as being paid to Individual B directly from Plan C and not through Trust D.

With respect to your ruling request, we conclude as follows:

That Individual B will be treated as acquiring the proceeds of Individual A's interest in Plan C as a surviving spouse of a deceased participant, and will not be treated as acquiring such interest from Trust D.

This ruling is based on the assumption that Plan C is qualified under section 401(a) of the Code and its trust is tax-exempt under section 501(a) of the Code at the time of the transfer and that the IRA E meets the applicable requirements of section 408 of the Code at all times relevant to the transaction described herein. This ruling also assumes that the transfer of Individual A's interest in Plan C to IRA E will meet the requirements of section 402 of the Code at the time of the transfer.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Internal Revenue 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, a copy of this letter ruling is being sent to your authorized representative.

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd
Chief, Employee Plans
Technical Branch 2

Enclosures:

Deleted copy of letter ruling
Form 437

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