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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply to:
OP:E:EP:T:3 NO: 50-03192

Date:

AUG 5 1999

LEGEND:

Taxpayer A:

Taxpayer B:

Trust C:

Subtrust D:

Subtrust E:

Company F:

Date 1:

Date 2:

Date 3:

Date 4:

Plan X:

Dear :

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

Taxpayer A, whose date of birth was Date 1, died at age 60 on Date 4, survived by Taxpayer B, his spouse whose date of birth was Date 2. At the time of his death, Taxpayer A was a participant in Plan X. Plan X's most recent favorable Code section 401(a) determination letter is dated May 4, 1999. Plan X, in pertinent part, provides that

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distributions to participants and their beneficiaries may be made in single lump sums.

On Date 3, Taxpayer A executed a beneficiary designation with respect to his interest in Plan X pursuant to which Taxpayer A named the trustee of Trust C as the beneficiary of his Plan X interest.

Article 1.02 of Taxpayer A's will provides that all of his property not specifically bequeathed under Article 1.01 shall be given to the trustee of his testamentary trust, Trust C. Taxpayer B and Company F are the co-trustees of Trust C. Article 3.02(e)(1) provides, in pertinent part, that Taxpayer B, during her lifetime, may at any time remove any trustee by written notice delivered to such trustee. Article 3.02(f)(2) provides that upon the removal of Company F as co-trustee by Taxpayer B, Taxpayer B, may, but is not required to, name a replacement co-trustee.

Article 7.09 of Taxpayer A's will, generally, defines the term "fiduciaries." It provides that the terms "personal representative" and "trustee" are to apply to the person or institution, or combination thereof, acting as such.

Article 2 of Taxpayer's will governs the allocation, administration and distribution of the Trust C estate. Article 2, in pertinent part, directs the trustee of Trust C to divide the trust estate into two subtrusts, Subtrusts D and E.

Subtrust D is a credit shelter trust which the trustee is required to fund with an amount that can pass free of federal estate tax by reason of Taxpayer A's federal unified credit. Subtrust E is to be funded with the balance of the Trust C estate remaining after Subtrust D is funded.

Article 2.02(a) of Taxpayer A's will provides the terms of Subtrust E. Article 2.02(a)(1) provides that the trustee shall pay to Taxpayer B, annually or at more frequent intervals, all of the net income of Subtrust E. Article 2.02(a)(2) provides that the trustee may distribute such amounts of the Subtrust E principal to Taxpayer B as the trustee determines. 2.02(b) provides that Taxpayer B may withdraw from time to time the principal of Subtrust E as Taxpayer B determines.

Taxpayer B and Company F, as co-trustees of Trust C, at the direction of Taxpayer B and within the time frame

provided under the terms of Plan X, will direct the Plan X administrator to distribute Taxpayer A's Plan X interest in a single sum to the co-trustees of Trust C. Taxpayer B and Company F, as co-trustees of Trust C, intend to allocate Taxpayer A's Plan X interest to Subtrust E. Immediately after the above actions have occurred, Taxpayer B, as beneficiary of Subtrust E, will demand a distribution from said Subtrust E of Taxpayer A's Plan X interest. The co-trustees will then pay Taxpayer A's Plan X interest to Taxpayer B. Taxpayer B will then roll over said Plan X interest into an individual retirement arrangement (IRA) set up and maintained in her name. Said rollover will occur no later than the 60th day following the date of the distribution to the co-trustees of Trust C.

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

1. That Taxpayer B is eligible to roll over the distribution of Taxpayer A's interest in Plan X into an IRA set up and maintained in her name pursuant to Code section 402(c) as long as the rollover occurs no later then the 60th day from the date said distribution is made from Plan X; and

2. that Taxpayer B will not be required to include in gross income for federal income tax purposes for the year in which the distribution from Plan X is made and the distribution is treated as being received by Taxpayer B, any portion of Taxpayer A's interest in Plan X that is timely rolled over into Taxpayer B's IRA.

With respect to your ruling requests, section 402(c)(1) of the Code provides, generally, that if any portion of an eligible rollover distribution from a section 401(a) of the Code qualified retirement plan is transferred into an eligible retirement plan, the portion of the distribution so transferred shall not be includible in gross income in the taxable year in which paid.

Section 402(c)(2) of the Code provides that the maximum amount of an eligible rollover distribution to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)).

Section 402(c)(4) of the Code defines "eligible rollover distribution" as any distribution to an employee of all or any portion of the balance to the credit of an

employee in a qualified trust except the following distributions:

(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 period of 10 years or more, and

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

Section 402(c)(8) of the Code defines eligible retirement plan as (i) an individual retirement account described in section 408(a), (ii) an individual retirement annuity described in section 408(b) (other than an endowment contract), (iii) a section 401(a) of the Code qualified retirement plan, and (iv) an annuity plan described in section 403(a).

Section 402(c)(3) of the Code provides 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.

Section 402(c)(9) of the Code provides that if a distribution attributable to an employee is paid to the spouse of the employee after the employee's death, section 402(c) of the Code will apply to such distribution in the same manner as if the spouse were the employee except that the spouse shall transfer such distribution only to a section 408(a) individual retirement account or a section 408(b) individual retirement annuity.

Section 1.402(c)-2 of the Income Tax Regulations, Question and Answer 12, provides, generally, that if a distribution attributable to an employee is paid to the employee's surviving spouse, section 402(c) applies to the distribution in the same manner as if the spouse were the employee. Thus, a distribution to the surviving spouse of an employee is an eligible rollover distribution if it meets the applicable requirements of section 402(c)(2) and (4) and the associated regulations.

With respect to your ruling requests, generally, if a decedent's qualified plan assets pass through a third party,

e.g. an estate or 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, said surviving spouse will not be eligible to roll over the qualified plan proceeds into her own IRA.

However, in this case, Trust C is the beneficiary of Taxpayer A's interest in Plan X, a Code section 401(a) qualified plan. The co-trustees of Trust C, which include Taxpayer B, have the power to allocate Taxpayer A's Plan X interest to either Subtrust D or Subtrust E. Taxpayer B has the power to remove her Trust C co-trustee and is not obligated to replace said co-trustee upon removal. Upon removal, Taxpayer B would have the sole authority to allocate Taxpayer A's Plan X interest.

Once an asset is allocated to Subtrust E, Taxpayer B has an unfettered right to demand payment thereof.

The facts above indicate that Taxpayer A's assets will be allocated to Subtrust E. Subsequently, Taxpayer B will demand that they be distributed to her. Upon receipt, Taxpayer B intends to roll them into an IRA set up and maintained in her name within the time frame specified in Code section 402(c)(3).

Based on the facts given above, the Service will not apply the general rule referenced herein and will treat Taxpayer B, Taxpayer A's surviving spouse, as having received Taxpayer A's Plan X interest from Taxpayer A and not from either Trust C or Subtrust E.

As noted above, the Plan X distribution referenced herein will be the only distribution made from said plan of any portion of Taxpayer A's interest in the plan. Furthermore, Taxpayer A had not attained age 70 1/2 at the time of death, and, if alive, would still have not attained age 70 1/2. Thus, said distribution is not ineligible to be treated as an "eligible rollover distribution" under Code section 402(c)(4)(A).

Thus, based on the above, the Service concludes with respect to your ruling requests:

1. That Taxpayer B is eligible to roll over the distribution of Taxpayer A's interest in Plan X into an IRA set up and maintained in her name pursuant to Code section 402(c) as long as the

rollover occurs no later then the 60th day from the date said distribution is made from Plan X; and

2. that Taxpayer B will not be required to include in gross income for federal income tax purposes for the year in which the distribution from Plan X is made and the distribution is treated as being received by Taxpayer B, any portion of Taxpayer A's interest in Plan X that is timely rolled over into Taxpayer B's IRA.

This ruling letter is based on the assumption that Plan X has satisfied or will satisfy the requirements of section 401(a) of the Code at all times relevant thereto. In addition, it assumes that the IRA set up by Taxpayer B to receive the amounts transferred from said plan will meet the requirements of section 408(a).

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 with this office, a copy of this letter ruling is being sent to your authorized representative.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Chief, Employee Plans
Technical Branch 3

Enclosures:

Deleted copy of letter ruling
Form 437

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