

Washington, DC 20224

Inform Issue List: 402.0800

Contact Person:

Telephone Number:

In Reference to:

T:EP:RA:T1

Date:

9/21/2000

Legend:

- Taxpayer A =
- Employer B =
- Plan X =

Dear :

This is in response to your letter dated March 28, 2000, as supplemented by additional correspondence dated June 8, 2000, and July 24, 2000, from your authorized representative, in which you request a private letter ruling from the Internal Revenue Service.

The following facts and representations have been submitted on your behalf:

Employer B established Plan X in 1965. Taxpayer A, an employee of Employer B, participates in Plan X. Since the adoption date of the Plan, normal retirement age in the Plan has been the later of age 65 or fulfilling 10 years of participation in the Plan.

The Employer intends to adopt an amendment to the Plan which will lower normal retirement age to age 80. The amendment will provide for in-service distributions to participants who attain the new normal retirement age, elect to take an in service lump sum distribution, and agree that their participation in Plan X will terminate as of the date of distribution.

Upon attaining age 60, on or after September 30, 2000, Taxpayer A intends to elect to take an in-service distribution of his entire account balance in Plan X and have the amount rolled over to an individual retirement arrangement ("IRA") established at an

independent financial institution in the form of a direct rollover under section **401(a)(31)** of the Internal Revenue Code ("**Code**").

Based on the foregoing facts and representations, you have requested the following ruling:

That the in-service distribution to Taxpayer A upon attaining age 60, which **will** be rolled over to an IRA at an independent financial **institution, will** be excluded from Taxpayer A's income as a rollover distribution from a qualified plan to an IRA, pursuant to sections **401(a)(31)** and 402(c) of the Code.

Code section **401(a)(31)(A)** states a trust shall not constitute a **qualified** trust under this section **unless 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** the eligible retirement plan to which such distribution is to be paid (in such form and at such as the plan administrator may **prescribe**), such distribution shall be made in the form of a direct **trustee-to-trustee** transfer to the eligible retirement plan so **specified**. Subsection B states 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(c) and **403(a)(4)**). Subsection C states that eligible rollover **distribution** has the meaning provided by section **402(f)(2)(A)**. Subsection **D** states that **eligible** retirement plan has the meaning given such term by section **402(c)(8)(B)**, except that a **qualified** trust shall be considered an **eligible** retirement plan only if it is a defined contribution plan, the terms of which **permit** the acceptance of rollover distributions.

With respect to direct **rollovers**, section 1402(c)-2(b)(l) of the regulations requires that qualified plans provide a distributee of an eligible rollover distribution the option to elect to have the distribution paid directly to an eligible retirement plan. Subsection 2 states that **Code** section **402(f)** requires the plan administrator of a qualified plan to provide, within a reasonable time before making an **eligible** rollover distribution, a **written** explanation to the **distributee** of the **distributee's** right to elect a direct rollover and the withholding consequences of not making that election. Subsection 3 states that if a **distributee** of an eligible rollover distribution does not elect to have the eligible rollover distribution paid directly from the plan **to** an eligible retirement plan in a direct rollover under Code section 401 **(a)(31)**, the eligible rollover distribution is subject to 20 percent income tax withholding.

1.401(a)(31)-1, Q&A-1 of the regulations states that to satisfy Code section **401(a)(31)**, a plan must provide that **if** the **distributee** of any eligible rollover **distribution** elects to have the distribution paid **directly** to an eligible retirement plan, and **specifies**

the eligible retirement plan to which the distribution is to be paid, then the **distribution** will be paid to that eligible retirement plan in a direct rollover **described** in Q&A-3. The plan must give me **distributee** the option of having his or her **distribution** paid in a direct rollover to an eligible retirement plan **specified** by the **distributee**. Subsection Q&A-3 states that a direct rollover that satisfies Code **section 401(a)(31)** is an **eligible** rollover distribution that is paid directly to an eligible retirement plan for the **benefit** of me **distributee**.

Code section 408(c)(2) states that in the case of any eligible rollover distribution, the maximum amount transferred to **which me** preceding sentence refers shall not exceed the portion of such distribution which is **includible** in gross income. Code **section 402(f)(2)(A)** states that eligible rollover distribution has the same meaning as Code section 403(a)(4) **which** cites Code section 402(a)(4) as **providing** the definition. Code(c)(1), in general, excludes from income any portion of the balance to the **credit** of an employee in a **qualified** plan paid to me employee in an eligible rollover distribution if such employee transfers the distribution to an eligible retirement plan. Code section 402(c)(4) defines the term "eligible rollover distribution" as any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust, except for certain exceptions, none of which are applicable hereto.

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

Code section 402(c)(5) states that a transfer to an eligible retirement plan described in (i) or (ii) of subparagraph (E)(B) resulting in any portion of a distribution being excluded from gross income under paragraph (1) shall be treated as a rollover contribution described in Code section 408(d)(3).

In the present case, Taxpayer A **will** elect a direct rollover and have all amounts in Taxpayer A's account balance paid directly from Plan X to an eligible retirement **plan**, me IRA. Therefore, we **conclude**, based on the facts and circumstances, that the distribution to Taxpayer A **which** is paid directly to A's **IRA will** constitute a direct rollover from a qualified plan to an IRA and will be excluded from Taxpayer A's income **in** me year **rolled** over.

These rulings are based on the assumption that Plan X **satisfies** the requirements of Code section **401(a)** and that Taxpayer A's IRA meets the requirements of Code section **408** at all times relevant to the proposed transaction.

This ruling is directed only to the Taxpayer who requested it Code section **6110(k)(3)** provides that it may not be used or cited by others as precedent

A **copy** of this letter has been sent to **your** authorized representative in accordance with **the power** of attorney on file in this **office**.

Sincerely yours,



Manager, Employee Plans
Technical Branch 1
Tax Exempt and Government
Entities Division

Enclosures:

Deleted **copy** of letter
Notice of Intention to Disclose

cc:

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