

200510039



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEC 16 2004

Uniform Issue List: 402.08-05

SE:T:EP:RA:T4

Legend:

Taxpayer A =
Taxpayer B =
Company C =
Plan X =

Dear

This is in response to the letter submitted on *****, by your authorized representative in which you request letter rulings concerning the application of section 402(c) of the Internal Revenue Code (the Code). The following facts and representations have been submitted under penalty of perjury in support of your ruling request.

Taxpayer A, whose date of birth was ***** died at age ** on *****.
Taxpayer A is survived by his three daughters and his surviving spouse,
Taxpayer B. Taxpayer B's date of birth is *****. In accordance with
Taxpayer A's will, Taxpayer B was named personal representative of Taxpayer A's
estate. On *****, the Circuit Court, County *****, State of *****, a
court of competent jurisdiction, duly appointed Taxpayer B to act as the personal
representative of the estate.

Prior to his death, Taxpayer A was retired from Company C and was a participant in
Plan X, a plan qualified under section 401(a) of the Internal Revenue Code. Taxpayer A

named his estate as beneficiary of his interest in Plan X, and Taxpayer B consented to this beneficiary designation. Pursuant to Article 3 of Taxpayer A's will, Taxpayer B will receive all the residue and remainder of the estate of Taxpayer A, including the interest held by Taxpayer A in Plan X. No amounts have been distributed to either Taxpayer A's estate or to Taxpayer B from Plan X. Article 2 of Taxpayer A's will states that *** shares of Company C's stock are to be given to each of Taxpayer A's daughters. This bequeath was satisfied by transferring stock shares from a taxable account of Taxpayer A to his ***** daughters.

In her capacity as personal representative of the estate of Taxpayer A, Taxpayer B proposes to direct the administrator of Plan X to make a single lump sum distribution of 100% of Taxpayer A's shares in Plan X to Taxpayer A's estate. As personal representative of the estate, Taxpayer B will then distribute all of these shares to Taxpayer B as Taxpayer A's surviving spouse and the recipient of all the residue and remainder of Taxpayer A's estate. Taxpayer B will then transfer by means of a rollover all shares of the distribution into an individual retirement arrangement (IRA) that meets the requirements of section 408 of the Code. Such rollover will occur within sixty days of the date the distribution is made from Plan X.

Based on the above facts and representations, 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 section 402(c) of the Code as long as the rollover occurs no later than 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 any portion of the Plan X distribution that is received by Taxpayer B and timely rolled over into Taxpayer B's IRA in the year in which the distribution is made from Plan X.

With respect to your ruling request, section 402(c)(1) of the Internal Revenue Code provides, in general, that if any portion of an eligible rollover distribution from a plan qualified under section 401(a) of the Code 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)) but states that this maximum limitation does not apply to a distribution transferred to an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B).

Section 402(c)(4) of the Code defines "eligible rollover distribution" as any distribution to an employee of all or a 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), and
- (C) any distribution which is made upon hardship of the employee.

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 plan, (iv) an annuity plan described in section 403(a), (v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and (vi) an annuity contract described in section 403(b).

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

Similarly, section 1.402(c)-2, Question and Answer 11, of the Income Tax Regulations states that if an eligible rollover distribution is paid to an employee and the employee contributes all or any part of the eligible rollover distribution to an eligible retirement plan no later than the 60th day following the date the employee received the distribution, the amount contributed is not currently includible in gross income.

Section 1.402(c)-2, Q&A 11, of the regulations further states that, because the amount withheld as income tax under section 3405(c) of the Code is considered an amount distributed under section 402(c), an amount equal to all or any portion of the amount withheld can be contributed as a rollover to an eligible retirement plan within the 60 day period, in addition to the net amount of the eligible rollover distribution received by the employee.

Section 402(c)(9) of the Code provides, in general, 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.

Section 1.402(c)-2 of the regulations, Q&A 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.

Section 1.402(c)-2 of the regulations, Q&A 7(b), provides that any amount that is paid before January 1 of the year in which the employee attains (or would have attained) age 70 ½ will not be treated as required under section 401(a)(9) and, thus, is an eligible rollover distribution if it otherwise qualifies.

With respect to your ruling request, generally, if a decedent's qualified plan assets pass through a third party, e.g., an estate or 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, in general, said surviving spouse will not be eligible to roll over the qualified plan proceeds into her own IRA.

However, in this case, Taxpayer B, as the sole beneficiary and personal representative of Taxpayer A's estate, proposes to have Plan X issue a check representing the entire interest of Taxpayer A in Plan X to Taxpayer B as personal representative of Taxpayer A's estate. Taxpayer B then proposes that Taxpayer A's interest in Plan X will then be distributed to her and then contributed to an IRA, established and maintained in her name. This contribution to her own IRA will be made within 60 days of the date the distribution is made from Plan X. Thus, all actions necessary to accomplish the rollover will be carried out by, and at the bequest of Taxpayer B. Under the circumstances presented in this ruling request, the Service will treat Taxpayer B, Taxpayer A's surviving spouse, as having acquired the Plan X proceeds directly from Taxpayer A and not from Taxpayer A's estate. Therefore, Taxpayer B qualifies as a spouse under section 402(c)(9) of the Code and is eligible to roll over those proceeds to her own IRA, assuming the distribution otherwise qualifies. As provided in section 1.402(c)-2 Q&A 11, Taxpayer B may rollover an amount equal to the entire amount withheld as income tax in addition to the amount that will actually be received from Plan X. Furthermore, inasmuch as the entire amount received from Plan X by Taxpayer B, including the amount withheld, will be timely contributed to an IRA, no portion of the Plan X proceeds will be taxable in the year it will be distributed from Plan X.

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

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 than the 60th day from the date said distribution is made from Plan X.

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, any portion of the distribution from Plan X that is timely rolled over into Taxpayer B's IRA.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations that may be applicable hereto.

This ruling assumes that Plan X is qualified within the meaning of Code section 401(a) and its trust tax-exempt under Code section 501(a) at all times relevant thereto. It assumes that the IRA set up and maintained in the name of Taxpayer B to receive the rollover contribution of Taxpayer A's benefit from Plan X meets the requirements of Code 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 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.

If you have any questions regarding this ruling, you may contact *****

Sincerely yours,

Donzell Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Notice of Intention to Disclose
Deleted copy of letter