TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200650023

SEP 20 2006

UIL: 402.08-00, 72.20-01
408.03-00

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Plan X:

Plan W:

Plan Z:

Company T:

Company U:

IRA Y:

Amount 1:

Amount 2:

Amount 3:

Date 1:

Date 2:

Dear :

This is in response to your letter dated , in which you request rulings under sections 72(t), 402(c)(9) and 408(d) of the Internal Revenue Code ("Code") and supplemented by letters dated , and . The following facts and representations have been submitted in support of your ruling request.

Taxpayer A whose date of birth was Date 1, 1951, died on Date 2, 2005 at the age of . He was survived by his wife, Taxpayer B, who was at the date of Taxpayer A's death. At the time of his death, Taxpayer A was a participant in Plan X, a profit-sharing plan described in Code section 401(a) which contained a cash or deferred feature under Internal Revenue Code Section 401(k). Company T is the administrator of Plan X. At the time of his death, Taxpayer A's account balance in Plan X was approximately Amount 1. Additionally, at his death, Taxpayer A had an account in Plan W, a plan of a former employer, which had a date of death value of approximately Amount 2. Company U is the administrator of Plan W. Taxpayer A also had Plan Z, a Simplified Employee Pension (SEP-IRA) at the time of his death. His interest in Plan Z was valued at approximately Amount 3. Taxpayer B was the sole beneficiary of Taxpayer A's accounts under Plan X and Plan W and of his Plan Z.

In accordance with plan procedures, after the death of Taxpayer A, both Company T, the administrator of Plan X, and Company U, the administrator of Plan W, set up a separate account under the respective plan to hold amounts payable to Taxpayer B, as the beneficiary of Taxpayer A. Said amounts remain in the accounts established under Plans X and W.

Taxpayer B proposes to set up an individual retirement account (IRA Y) in Taxpayer A's name of which she, Taxpayer B, will be named as beneficiary. Taxpayer B intends to direct the administrators of Plan X and of Plan W, to transfer the full amounts due her as sole beneficiary (the entire accounts) to IRA Y in transfer described in and meeting the requirements of section 401(a)(31) of the Code. Similarly Taxpayer B will transfer the assets from Plan Z to IRA Y. All of the above actions will occur during calendar year 2006. Once said transfers are completed, Taxpayer B intends to then begin receiving distributions from IRA Y prior to her attaining age 59 ½.

Based on the above facts and representations, you request the following letter rulings:

1. That the amounts directly transferred from Plan X, Plan W to IRA Y during calendar year 2006 may be excluded from Taxpayer B's calendar year 2006 income as rollover contributions from qualified retirement plans to an IRA pursuant to sections 402(c)(9), and 401(a)(31) of the Code;

2. That the amounts transferred from Plan Z to IRA Y may be excluded from Taxpayer B's calendar year 2006 income pursuant to Code section 408(d)(3); and

3. That distributions from IRA Y to Taxpayer B made prior to Taxpayer B's attaining age 59 1/2 will not be subject to the 10 percent additional income tax imposed by section 72(t)(1) of the Code because of section 72(t)(2)(A)(ii) of the Code.

With respect to your first ruling request, section 402(a) of the Code provides that, except as otherwise provided in this section, any amount actually distributed to any distributee by any 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).

Section 402(c)(1) of the Code provides, generally, that if any portion of an eligible rollover distribution from a qualified trust 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)(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,

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

(C) any distribution which is made upon the hardship of the employee

Section 402(c)(8)(B) of the Code defines an eligible retirement plan. An IRA described in section 408(a) of the Code is included in the definition.

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.

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

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 sections 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 1.401(a)(31)-1 of the Income Tax Regulations, Question and Answer 15, provides, in summary, that for purposes of the Code section 401(a) requirements, a direct rollover described in Code section 401(a)(31) is a distribution and rollover of the eligible rollover distribution and not a transfer of assets and liabilities.

In general, a surviving spouse of an employee/plan participant who is the sole beneficiary of the participant's interest in a plan qualified under Code section 401(a) may roll over the deceased's plan interest into an IRA described in Code section 408(a). Said recipient IRA may be set up and maintained in the name of the surviving spouse but an election to so set up and maintain is not mandatory.

In this case, Taxpayer B was the sole beneficiary of Taxpayer A's interests under Plans X and W. Her interests in said plans have been set aside as separate, beneficiary interests being maintained for her benefit under the plans. Taxpayer B proposes to receive, or be treated as having received, distributions of the full amounts due her from Plan X, and Plan W. She will then roll over, by means of direct rollovers within the meaning of section 401(a)(31) of the Code, the Plan X, and Plan W distributions into IRA Y. She does not intend to make an election to treat IRA Y as her own. As a result, IRA Y will be set up and maintained in the name of Taxpayer A to benefit Taxpayer B.

As noted above, Taxpayer A's rolling over the distributions from her deceased's husband's qualified retirement plans into an IRA in and of itself need not constitute an election to treat the IRA as her own. However, Taxpayer B's intended actions with respect to her beneficial interests in Plan X and W do satisfy the requirements of Code sections 402(c)(9) and 401(a)(31) of the Code.

Therefore, with respect to your first ruling request, we conclude as follows:

1. That the distributions from Plan X, and Plan W to IRA Y may be excluded from Taxpayer B's income as rollover contributions from qualified retirement plans to an IRA pursuant to sections 402(c)(9) and 401(a)(31) of the Code.

With respect to your second ruling request, section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distribute, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except the maximum amount which must be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from and IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(C)(i) of the Code provides that section 408(d)(3) does not apply to inherited individual retirement accounts or annuities, however, section 408(d)(3)(C)(ii) provides that an individual retirement account will be treated as inherited if

(I) the individual for whose benefit the account or annuity is maintained acquired such account by reason of the death of the individual, and

(II) such individual was not the surviving spouse of such individual.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

A surviving spouse is the only individual who may elect to treat a beneficiary interest in an IRA as the beneficiary's own account. An election will be considered to have been made by a surviving spouse if either of the following occurs: (1) any required amounts in the account (including any amounts that have been rolled over or transferred, in accordance with the requirements of section 408(d)(3)(A)(i), into an IRA for the benefit of such surviving spouse) have not been distributed within the appropriate time period applicable to the decedent under section 401(a)(9)(B), or (2) any additional amounts are contributed to the account (or to the account or annuity to which the surviving spouse has rolled such amounts over, as described in (1) above) which are subject, or deemed to be subject, to the distribution requirements of section 401(a)(9)(A). The result of such an election is that the surviving spouse shall then be considered the individual for whose benefit the trust is maintained.

However, a surviving spouse who is the sole beneficiary of a deceased's interest in an IRA (including a SEP-IRA), in lieu of the action described immediately above, may elect to transfer her deceased husband's IRA account into another IRA set up and maintained in the name of

the deceased husband for her benefit. Said transfer will comply with the requirements of Code section 408(d)(3). Furthermore, in such a case, the surviving spouse is not considered the individual for whose benefit the trust is maintained.

In this case, Taxpayer B will accomplish a transfer of the full amount due her from Plan Z into IRA Y. After the transfer is accomplished, IRA Y will continue to be maintained in the name of Taxpayer A as Taxpayer B will not affirmatively elect to treat IRA Y as her own IRA. We believe that such a transaction falls within the scope of Code section 408(d)(3).

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

2. That the amounts transferred from Plan Z to IRA Y may be excluded from Taxpayer B's calendar year 2006 income for Federal tax purposes pursuant to Code section 408(d)(3).

With respect to your third ruling request, section 72(t)(1) of the Code provides that if any taxpayer receives an amount from a qualified retirement plan (as defined in section 4974(c)), the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income.

Section 4974(c) of the Code defines "qualified retirement plan" to include individual retirement accounts described in section 408(a) and individual retirement annuities described in section 408(b).

Section 72(t)(2)(A) of the Code lists several types of distributions which are not subject to the section 72(t)(1) tax. Section 72(t)(2)(A)(ii) provides that distributions made to a beneficiary (or estate of the employee) on or after the death of the employee constitute one type of distribution on which the section 72(t)(1) tax will not be imposed.

In this case, as noted above, Taxpayer B will receive distributions from Plan X, Plan W and Plan Z, and proposes in calendar year 2006 to contribute, either by means of direct rollovers described in Code section 401(a)(31), or by means of a transaction described in Code section 408(d)(3), said distributions to IRA Y prior to attaining age 59 1/2. She then proposes to begin receiving distributions from said IRA Y. As also noted above, even after Taxpayer B accomplishes her intended rollovers and transfer, she will not become the owner of IRA Y but intends to remain the beneficiary thereof. As such, she will be treated as the beneficiary of IRA Y for purposes of section 72 of the Code.

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

3. That distributions from IRA Y to Taxpayer B made prior to Taxpayer B's attaining age 59 1/2 will qualify for the section 72(t)(2)(A)(ii) of the Code exception to the 10 percent additional income tax imposed by section 72(t)(1) of the Code since they will be treated as having been made to a beneficiary as that term is defined in section 72(t)(2)(A)(ii) on or after the death of an employee.

These letter rulings are based on the assumption that Plan X, and Plan W are qualified under section 401(a) of the Code and the related trusts tax-exempt under section 501(a) at all time s relevant thereto Furthermore, the rulings are based on the assumption that Taxpayer A's Plan Z and Taxpayer B's IRA Y will meet the applicable requirements of section 408 at all times relevant thereto. The letter rulings are also based on the assumption that the direct rollovers of amounts from Plan X, and Plan W to IRA Y will meet all of the rules applicable to direct rollovers found in sections 402 and 401(a)(31) of the Code.

Please note that, in accordance with the factual representations made herein, the letter rulings also assume that any distributions that Taxpayer B receives from IRA Y will be received as a beneficiary thereof. Our response to the third ruling request is without effect if Taxpayer A chooses to convert IRA Y into an IRA set up and maintained in her name prior to attaining 59 ½ and then receives distributions from said converted IRA prior to attaining age 59 ½.

The author of this ruling is who may be reached at ( ) -

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Sincerely yours,

Frances V. Sloan

, Manager
Employee Plans Technical Group

Enclosures:

Deleted copy of letter ruling
Form 437