Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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UIC: 403.00-00
403.05-00

Contact Person:

Telephone Number:

In Reference to:

T:EP:RA:T3 NO: 50-03192

Date:

OCT 11 2000

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Annuity D;

Company E:

State F:

Date 1:

Date 2:

Date 3:

Amount 1:

Amount 2:

Amount 3:

Dear

This is in response to the , letter submitted on your behalf by your authorized representative, as supplemented by correspondence received by the Internal Revenue Service on , and correspondence dated in which you request a letter ruling under section 403(b)(10) 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 63 on Date 2, survived by Taxpayer B, his spouse.

At the time of his death, Taxpayer A owned Annuity D, an annuity which your authorized representative asserts is described in Code section 403(b), with Company E.

236

Prior to his death, Taxpayer A executed a beneficiary designation with respect to his interest in Annuity D pursuant to which Taxpayer A named Taxpayer C, his daughter, as the beneficiary of his Annuity D.

On Date 3, which was within nine (9) months of Date 2, Taxpayer C executed a disclaimer of her interest in Annuity D which your authorized representative asserts is a valid disclaimer under the laws of State F. The disclaimer, in part, indicated that Taxpayer C had not accepted the disclaimed property or an interest in the disclaimed property. Your authorized representative has also asserted on your behalf that, with respect to the disclaimed property, pursuant to the laws of State F, Taxpayer C is treated as if she had predeceased Taxpayer A. As a result of Taxpayer C's disclaimer, Taxpayer A's estate became the beneficiary of his Annuity D.

Taxpayer A's will, in relevant part, provides that Taxpayer B is the beneficiary of Taxpayer A's residuary estate. Taxpayer A's will also provides that Taxpayer B is to be the sole Personal Representative of his estate.

After the disclaimer referenced above, Company E distributed Annuity D proceeds totaling Amount 1 to Taxpayer B, the personal representative of the estate of Taxpayer A. Said personal representative then paid Annuity D proceeds totaling Amount 2, which was less than Amount 1, to Taxpayer B, the surviving spouse of Taxpayer A. Taxpayer B, as the residual beneficiary of Taxpayer A's estate, then rolled over the Annuity D proceeds which she had received into an individual retirement arrangement (IRA) set up and maintained in her name. The rollover occurred within 60 days of the date on which the personal representative of Taxpayer A's estate had received Taxpayer A's Annuity D proceeds.

Based on the above facts and representations, you, through your authorized representative, request the following letter ruling:

> That Taxpayer B was eligible to roll over the distribution of Taxpayer A's interest in Annuity D into an IRA set up and maintained in her name pursuant to Code section 403(b) as long as the rollover occurred no later then the 60th day measured from the date said distribution was received by the personal representative of Taxpayer A's estate.

With respect to your ruling request, 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)(B) 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 1.402(c)-2 of the Income Tax Regulations, Question and Answer 7(b), provides, generally, that any amount that is paid from a qualified plan 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.

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.

Code section 403(b)(8)(A) sets down the general rule applicable to rollovers of amounts received from Code section 403(b) annuities.

Code section 403(b)(8)(B) provides, in summary, that rules similar to rules of paragraphs (2) through (7) of section 402(c) shall apply for purposes of subparagraph (A).

Code section 403(b)(10) provides, in relevant part, that requirements similar to the requirements of Code section 401(a)(9) apply to annuities described in Code section 403(b).

Section 1.403(b)-2 of the regulations, Q&A-1, provides, in summary, that an eligible rollover distribution received from a Code section 403(b) annuity may be rolled over into an IRA. Section 1.403(b)-2 of the regulations, Q&A-1, further provides, in short, that the rules with respect to rollovers in sections 402(c)(1), (c)(3) and (c)(9) also apply to eligible rollover distributions from section 403(b) annuities.

With respect to your ruling request, 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, subsequent to the disclaimer referenced above, Taxpayer A's estate became the beneficiary of Taxpayer A's interest in Annuity D, an annuity described in Code section 403(b). Taxpayer A's interest in Annuity D was paid to Taxpayer B as the personal representative of Taxpayer A's estate. As personal representative, Taxpayer B paid Amount 2, a portion of Taxpayer A's Annuity D, to Taxpayer B as residuary beneficiary of Taxpayer A's estate. Taxpayer B then rolled over Amount 2 into an IRA set up and maintained in her name.

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 Annuity D, to the extent of Amount 2, from Taxpayer A and not from Taxpayer A's estate.

As noted above, the Annuity D distribution referenced herein was the only distribution made from said annuity of any portion of Taxpayer A's interest in the annuity. Furthermore, Taxpayer A had not attained age 70 1/2 at the time of death, and, if alive, would still not have 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) which applies to distributions of Code section 403(b) annuities pursuant to Code section 403(b)(8).

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

> That Taxpayer B was eligible to roll over the distribution of Taxpayer A's interest in Annuity D into an IRA set up and maintained in her name, pursuant to Code section 403(b), as long as the rollover occurred no later then the 60th day measured from the date said distribution was received by the personal representative of Taxpayer A's estate.

This ruling letter is based on the assumption that Annuity D had satisfied the requirements of section 403(b) 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 has met or will meet the requirements of section 408(a) at all times relevant thereto. Finally, it assumes that the disclaimer referenced herein complies with the requirements of Code section 2518.

This ruling letter notes that Amount 2 was rolled over into Taxpayer B's IRA. The ruling letter does not apply to the difference between Amount 1 and Amount 2 which difference was Amount 3.

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
Manager, Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of letter ruling
Form 437