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**Internal Revenue Service**

Department of the Treasury

Washington, DC 20224

UICs: 401.06-00
401.06-01

Contact Person:

Telephone Number:

In Reference to:
T:EP:RA:T3

Date:

MAR 14 2001

LEGEND:

Taxpayer A:

Taxpayer B:

Company C:

Plan X:

IRA Y:

IRA Z:

Date 1:

Date 2:

Month 3:

Date 4:

Date 5:

Month 6:

Date 7:

Date 8:

Year 9:

Amount 1:

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Amount 2:

Dear Mr. :

This is in response to the , request for letter ruling submitted on your behalf by your authorized representative, as supplemented by correspondence dated , and , in which you request a series of letter rulings with respect to sections 401(a)(9) and 408(a)(6) of the Internal Revenue Code. The following facts and representations support your ruling requests.

Taxpayer A, whose date of birth was Date 1, 1926, attained age 70 ½ on Date 2, 1997. Taxpayer A is an active employee of Company C. Taxpayer A is not, and has never been a "five percent owner", as that term is defined in Code section 416(i)(1)(B)(i), of Company C.

Taxpayer A is an participant in Plan X, a defined contribution plan maintained by Company C, which your authorized representative asserts is a qualified plan within the meaning of Code section 401(a).

Your authorized representative has presented documentation to the Internal Revenue Service which indicates that Plan X permits a Company C employee/Plan X participant who is not a "five-percent owner", as that term is defined in Code section 416, to defer receiving required distributions from Plan X until April 1 of the calendar year following that calendar year in which the employee terminates employment with Company C. The documentation also verifies that you are not a five-percent owner of Company C.

During Month 3, 1999, Taxpayer A received an in-service distribution in the amount of Amount 1 from Plan X which distribution was directly transferred to IRA Y, a pre-existing individual retirement arrangement. The amounts transferred (rolled over) from Plan X to IRA Y were accounted for separately from amounts in IRA Y prior to said transfer.

In Month 6, 2000, Taxpayer A married Taxpayer B, whose date of birth was during Year 9. On or about Date 4, 2000, Taxpayer A named Taxpayer B as the beneficiary of his IRA Y.

On or about Date 5, 2000, assets of IRA Y, in the amount of Amount 2, were transferred, by means of a trustee to trustee transfer, to IRA Z. The amounts that were transferred from IRA Y to IRA Z consisted solely of the amounts originally transferred from Plan X, with adjustment for gains and losses. Assets that were present in IRA Y

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prior to the Month 3, 1999 transfer (rollover), referenced above, were not transferred to IRA Z.

On or about Date 7, 2000, Taxpayer A named Taxpayer B as the beneficiary of his IRA Z.

Taxpayer A elected to receive required distributions from his IRA Z over his and Taxpayer B's joint life expectancy. By means of a form dated Date 8, 2000, Taxpayer A elected not to recalculate either his or Taxpayer B's life expectancy.

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

1. That as of Month 3, 1999, Taxpayer A had not attained his Code section 401(a)(9) required beginning date with respect to his interest in Plan X;

2. that Taxpayer A's required Code section 401(a)(9) required beginning date with respect to his interest in Plan X is April 1 of the calendar year following the later of (1) the calendar year in which he attains age 70 ½ or (2) the calendar year in which he separates from the service of Company C;

3. that Amount 1, which was directly transferred (rolled over) from Taxpayer A's Plan X account to his IRA Y during Month 3, 1999, was not subject to the Code section 401(a)(9) required distribution rules, made applicable to IRAs under Code section 408(a)(6), during calendar year 1999;

4. that Amount 2 transferred from IRA Y to IRA Z on or about Date 5, 2000, will not be subject to the required distribution rules of Code sections 401(a)(9) and 408(a)(6) until December 31, 2000;

5. the first required distribution year with respect to IRA Z which consists of amounts originally distributed from Plan X to IRA Y, adjusted for gains and losses, is calendar year 2000 and the required distribution date with respect thereto is December 31, 2000;

6. that the required distribution date referenced in ruling request 5 is the required distribution date for purposes of Code sections 401(a)(9) and 408(a)(6);

7. that, with respect to IRA Z that consists of amounts originally distributed from Plan X to IRA Y, adjusted for gains and losses, Taxpayer A was eligible to designate a beneficiary for purposes of Code sections 401(a)(9) and 408(a)(6) until December 31, 2000;

8. that Taxpayer A timely designated Taxpayer B as the beneficiary of his IRA Z that consists of amounts distributed from Plan X to IRA Y, adjusted for gains and losses;

9. that Taxpayer A may timely elect the term-certain method (non-recalculation) with respect to calculating his Code sections 401(a)(9) and 408(a)(6) required distributions from IRA Z on or before December 31, 2000;

10. that Taxpayer A timely elected the joint life expectancy, term-certain method, of receiving Code sections 401(a)(9) and 408(a)(6) required distributions from his IRA Z;

11. that distributions from IRA Z must begin no later than December 31, 2000, in order to satisfy Code sections 401(a)(9) and 408(a)(6);

12. that required distributions from Taxpayer A's IRA Z for calendar year 2000 (which must be made no later than December 31, 2000) must be based on the IRA Z balance as of December 31, 1999 (which consisted of the amounts transferred from IRA Y to IRA Z during Month 3, 1999 adjusted for gains and losses) divided by the joint life expectancy of Taxpayers A and B which life expectancy is not recalculated pursuant to Taxpayer A's electing the term certain method of calculating life expectancies; and

13. that required distributions from Taxpayer A's IRA Z for calendar year 2001 (which must be made no later than December 31, 2001) may be based on the IRA Z balance as of December 31, 2000 (which consists of the amounts transferred from IRA Y to IRA Z during Month 3, 1999 adjusted for gains and losses) divided by the joint life expectancy of Taxpayers A and B which life expectancy is not recalculated pursuant to Taxpayer A's electing the term certain method of calculating life expectancies.

With respect to your initial three (3) ruling requests, Section 401(a)(9)(C) of the Code provides, in relevant part, that, for purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the later of (I) the calendar year in which the employee attains age 70 ½, or (II) the calendar year in which the employee retires. In general, Section 401(a)(9)(C)(II) does not apply for purposes of Code section 408(a)(6), i.e. does not apply to distributions from IRAs, and also does not apply to employees who are 5-percent owners (as defined in Code section 416)).

Code section 401(a)(9)(C), as above, is a result of an amendment to the Code made by section 1404 of the Small Business Job Protection Act (SBJPA). The Code amendments made by section 1404 of the SBJPA apply to years beginning after December 31, 1996.

Your ruling request, and the documentation which accompanied it, indicates that Taxpayer A is an active employee of Company C who is not and has never been a five-percent owner thereof. It also indicates that he attained age 70 ½ in 1997 and is not required to commence Code section 401(a)(9) required distributions under Plan X prior to terminating service with Company C.

With respect to amount distributed from Taxpayer A's Plan X account and transferred (rolled over) to his IRA Y, Taxpayer A had not attained his "required beginning date" with reference to Plan X. However, once the amounts were rolled over into IRA Y, they became subject to the required distribution rules applicable to IRAs.

The amounts transferred (rolled over) from Plan X into Taxpayer A's IRA Y during calendar year 1999 were accounted for separately from other amounts present in IRA Y. Thus, the issue with respect to said amounts, which were subsequently transferred to IRA Z, is when must required distributions commence.

With respect to said amounts, no account balance existed in IRA Y as of December 31, 1998. Thus, with respect to IRA Y, no account balance existed for purposes of computing a required distribution for calendar year 1999.

However, an account balance for purposes of computing required distributions did exist as of December 31, 1999.

Based on the above, the Service concludes with respect to your first three ruling requests as follows:

1. That as of Month 3, 1999, Taxpayer A had not attained his Code section 401(a)(9) required beginning date with respect to his interest in Plan X;

2. that Taxpayer A's required Code section 401(a)(9) required beginning date with respect to his interest in Plan X is April 1 of the calendar year following the later of (1) the calendar year in which he attains age 70 ½ or (2) the calendar year in which he retires from Company C; and

3. that Amount 1, which was directly transferred (rolled over) from Taxpayer A's Plan X account to his IRA Y during Month 3, 1999, was not subject to the Code section 401(a)(9) required distribution rules, made applicable to IRAs under Code section 408(a)(6), during calendar year 1999.

As noted above, the amendment made to Code section 401(a)(9) by section 1404 of the SBJPA does not apply to IRA distributions. Thus, pursuant to Code section 401(a)(9)(C), as made applicable to IRAs because of Code section 408(a)(6),

distributions from an IRA must commence no later than April 1 of the calendar year during which the IRA holder attained age 70 ½.

In this case, Taxpayer A attained age 70 ½ during calendar year 1997. Thus, with respect to his IRAs, his Code section 401(a)(9)(C) required beginning date was April 1, 1998.

As noted above, with respect to amounts transferred from Plan X to IRA Y, no account balance existed in IRA Y as of December 31, 1998. Thus, with respect to IRA Y, no account balance existed for purposes of computing a required distribution for calendar year 1999.

However, an account balance for purposes of computing required distributions did exist as of December 31, 1999.

Thus, it is reasonable to conclude that, consistent with applicable sections of the Code and proposed regulations, distributions from IRA Y of the amounts transferred (rolled over) from Plan X and separately accounted for (Amount 1) must have commenced no later than December 31, 2000.

Section 1.401(a)(9)-1 of the Proposed Income Tax Regulations, Question and Answer G-3, provides, in pertinent part, that a transfer from one plan (IRA) to another is not treated as a distribution for purposes of Code section 401(a)(9)

As noted above, Taxpayer A transferred his IRA Y account balance, to the extent it consisted of Amount 1 initially transferred from Plan X to IRA Y, as adjusted for gains and losses, to IRA Z. However, said transfer will have no effect on determining Taxpayer A's required beginning date with respect to said amounts which remains December 31, 2000. Furthermore, such transfer does not constitute a calendar year 2000 required minimum distribution.

Code section 401(a)(9)(E) provides, in short, that the term "designated beneficiary" is any individual designated as a beneficiary by the employee (IRA holder).

Section 1.401(a)(9)-1 of the Proposed Income Tax Regulations, Question and Answer D-3, provides that for purposes of calculating the distribution period for distributions that begin prior to death, the designated beneficiary will be determined as of the plan participant's (IRA holder's) required beginning date.

In this case, as noted above, with respect to Taxpayer A's IRA Y (to the extent it consisted of amounts transferred from Plan X), and IRA Z, Taxpayer A's required beginning date is December 31, 2000. Thus, Taxpayer A may designate a beneficiary with respect thereto by December 31, 2000.

As noted above, Taxpayer A named Taxpayer B as the beneficiary of his IRA Y and of his IRA Z during calendar year 2000. Said action on the part of Taxpayer A was timely for purposes of Code section 401(a)(9).

Code section 401(a)(9)(D) provides, in short, that the life expectancy of an employee (IRA holder) and his spouse may be recalculated but not more frequently than annually.

Section 1.401(a)(9)-1 of the Proposed Income Tax Regulations, Question and Answer E-7(c) provides, in relevant part, that an employee (IRA holder) and/or his spouse must elect whether or not life expectancy will be recalculated no later than the time of the first required distribution. As of the date of the first required distribution, a method (either recalculation or no recalculation) which is in effect with respect to the employee and/or his spouse is irrevocable and applies to all subsequent calendar years.

In this case, as noted above, Taxpayer A, during calendar year 2000, elected to not recalculate either his or his spouse's, Taxpayer B's, life expectancy for purposes of Code section 401(a)(9).

Section 1.408-8 of the Proposed Income Tax Regulations, Question and Answer A-5, provides, in relevant part, that for purposes of determining the minimum distribution from an IRA in any calendar year, the account balance of the IRA as of the December 31 of the calendar year immediately preceding the calendar year for which distributions are being made will be used (will be substituted in section 1.401(a)(9)-1, Q&A F-1, for the benefit of the employee).

Section 1.401(a)(9)-1 of the Proposed Income Tax Regulations, Question and Answer F-1, provides, in relevant part, that for purposes of determining required distributions, the amount required to be distributed must at least equal the quotient obtained by dividing the employee's benefit/account balance (determined with respect to IRAs as of December 31 of the relevant calendar year) by the applicable life expectancy;.

Thus, based on the above, with respect to your fourth through thirteenth ruling requests, the Service concludes as follows:

4. that Amount 2 transferred from IRA Y to IRA Z on or about Date 5, 2000, will not be subject to the required distribution rules of Code sections 401(a)(9) and 408(a)(6) until December 31, 2000;

5.. the first required distribution year with respect to IRA Z which consists of amounts originally distributed from Plan X to IRA Y, adjusted for gains and

losses, is calendar year 2000 and the required distribution date with respect thereto is December 31, 2000;

6. that the required distribution date referenced in ruling request 5 is the required distribution date for purposes of Code sections 401(a)(9) and 408(a)(6);

7. that, with respect to IRA Z that consists of amounts originally distributed from Plan X to IRA Y, adjusted for gains and losses, Taxpayer A was eligible to designate a beneficiary for purposes of Code sections 401(a)(9) and 408(a)(6) until December 31, 2000;

8. that Taxpayer A timely designated Taxpayer B as the beneficiary of his IRA Z that consists of amounts distributed from Plan X to IRA Y, adjusted for gains and losses;

9. that Taxpayer A may timely elect the term-certain method (non-recalculation) with respect to calculating his Code sections 401(a)(9) and 408(a)(6) required distributions from IRA Z on or before December 31, 2000;

10. that Taxpayer A timely elected the joint life expectancy, term-certain method, of receiving Code sections 401(a)(9) and 408(a)(6) required distributions from his IRA Z;

11. that distributions from IRA Z must begin no later than December 31, 2000, in order to satisfy Code sections 401(a)(9) and 408(a)(6);

12. that required distributions from Taxpayer A's IRA Z for calendar year 2000 (which must be made no later than December 31, 2000) must be based on the IRA Z balance as of December 31, 1999 (which consists of the amounts transferred from IRA Y to IRA Z during Month 3, 1999 adjusted for gains and losses) divided by the joint life expectancy of Taxpayers A and B which life expectancy is not recalculated pursuant to Taxpayer A's electing the term certain method of calculating life expectancies; and

13. that required distributions from Taxpayer A's IRA Z for calendar year 2001 (which must be made no later than December 31, 2001) may be based on the IRA Z balance as of December 31, 2000 (which consists of the amounts transferred from IRA Y to IRA Z during Month 3, 1999 adjusted for gains and losses) divided by the joint life expectancy of Taxpayers A and B which life expectancy is not recalculated pursuant to Taxpayer A's electing the term certain method of calculating life expectancies.

This ruling letter is based on the assumption that Plan X is, and has been, a qualified retirement plan within the meaning of Code section 401(a) at all times relevant thereto. It also assumes that IRAs Y and Z either meet or have met the requirements of Code section 408 at all times relevant thereto. Finally, it assumes, as represented, that Taxpayer A has not ever been a five-percent owner, as that term is used in Code section 416, of Company C as represented.

This ruling letter addresses issues dealing with distributions either made or to be made through calendar year 2001. As a result, no reference is made to the changes made to sections 1.401(a)(9)-1 and 1.408-8 of the proposed regulations published in the Federal register on January 17, 2001.

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

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Manager, Employee Plans
Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of letter ruling
Form 437