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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

NOV 4 2002

Uniform Issue List: 402.08-05

T:EP:RA:T4

Legend:

Taxpayer A =

Taxpayer B =

State C =

Employer M =

Custodian N =

Plan X =

IRA Y =

Dear :

This is in response to a ruling request dated October 8, 2002, submitted on your behalf by your authorized representative in which you request a private letter ruling under section 402 of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted in support of the rulings requested:

Taxpayer A and Taxpayer B were married. Taxpayer A, a resident of State C, died on February 23, 2000, and was survived by Taxpayer B.

At the time of her death, Taxpayer A was a participant in Plan X, a plan maintained by Employer M. You represent that Plan X, a defined benefit plan, is qualified under section 401(a) of the Code and its trust is exempt under section 501(a) of the Code.

Taxpayer A executed her Last Will and Testament ("Will") on March 5, 1982. Pursuant to Items II and III of the Will, Taxpayer B received all of the property passing under Taxpayer A's estate as Taxpayer A's sole beneficiary.

On September 4, 2002, Taxpayer B, as executor of Taxpayer A's estate, received a check in the amount of $ from Plan X. Such distribution represented a lump-sum distribution of Taxpayer A's entire interest in Plan X.

Taxpayer B then immediately endorsed the check to Custodian N. Custodian N is the custodian of Taxpayer B's IRA Y. You represent that IRA Y meets the requirements of section 408 of the Code. The check was deposited in IRA Y within 60 days of the distribution from Plan X.

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

1. That the distribution from Plan X to Taxpayer B, as sole executor and sole beneficiary of Taxpayer A's estate, constituted an eligible rollover distribution pursuant to sections 402(c)(1) and 402(c)(9) of the Code; and

2. That, to the extent that the distribution from Plan X to Taxpayer B has been rolled over to IRA Y within the 60-day period specified by section 402(c)(3) of the Code, such distribution will not be includible in Taxpayer B's gross income in the year in which the distribution occurred.

With respect to your ruling request, section 402(a)(1) of the Code provides, in general, that any amount actually distributed to any distributee by any employees' trust described in section 401(a) of the Code which is exempt from tax under section 501(a) of the Code shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 of the Code (relating to annuities).

Section 402(c)(1) of the Code provides, in general, that if any portion of an eligible rollover distribution from a qualified trust is transferred to 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 section 402(c)(1) of the Code applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to

section 402(c)(1) of the Code).

Section 402(c)(3) of the Code provides that, in general, 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)(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 that the term shall not include—

(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 specified period of 10 years or more,

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

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

Section 402(c)(5) of the Code provides that a transfer to an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B) of the Code resulting in any portion of a distribution being excluded from gross income under section 402(c)(1) of the Code shall be treated as a rollover contribution described in section 408(d)(3) of the Code.

Section 402(c)(8)(B) of the Code defines an "eligible retirement plan" as (i) an individual retirement account described in section 408(a) of the Code, (ii) an individual retirement annuity described in section 408(b) of the Code (other than an endowment contract), (iii) a qualified trust, (iv) an annuity plan described in section 403(a) of the Code, (v) an eligible deferred compensation plan described in section 457(b) of the Code which is maintained by an eligible employer described in section 457(e)(1)(A), and (vi) an annuity contract described in section 403(b) of the Code.

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.

Section 1.402(c)-2 of the Income Tax Regulations, Q&A-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) of the Code and, thus, is an eligible rollover distribution, if it otherwise qualifies.

As a general rule, 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, the surviving spouse will not be eligible to roll over the qualified plan proceeds into his/her own IRA.

In this case, Taxpayer B is both executor of Taxpayer A's estate and Taxpayer A's sole beneficiary under Taxpayer A's Will. As such, Taxpayer B has the authority to dispose of the assets of Taxpayer A's estate. Therefore, the general rule cited above does not apply.

Based on the facts as above state, the Service will not apply the general rule referenced herein but will instead treat Taxpayer B, Taxpayer A's surviving spouse, as having received the distribution from Taxpayer A and not from Taxpayer A's estate.

Taxpayer B, as executor and sole beneficiary of Taxpayer A's estate, exercised his right to the distribution from Plan X by establishing IRA Y with Custodian N and transferring the entire lump-sum distribution to IRA Y within 60 days of the date the distribution was received by Taxpayer A's estate. The Plan X distribution referenced herein was the only distribution made from Plan X to Taxpayer A's estate. Taxpayer A had not attained age 70 ½ at the time of her death, nor would she have attained age 70 ½ in 2002, the year of the distribution.

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

1. That the distribution from Plan X to Taxpayer B, as sole executor and sole beneficiary of Taxpayer A's estate, constituted an eligible rollover distribution pursuant to sections 402(c)(1) and 402(c)(9) of the Code; and

2. That, to the extent that the distribution from Plan X to Taxpayer B has been rolled over to IRA Y within the 60-day period specified by section 402(c)(3) of the Code, such distribution will not be includible in Taxpayer B's gross income in the year in which the distribution occurred.

This ruling letter assumes that Plan X was qualified under section 401(a) of the Code at the time the distribution was made to Taxpayer A's estate and that IRA Y meets the requirements of section 408(a) of the Code.

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 thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

This ruling letter was prepared by of this Group. He may be contacted at .

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative.

Sincerely yours,

Alan C. Pipkin
Manager, Technical Group 4
Employee Plans