200317040

DEC 18 2002

UICs: 403.04-00, 403.05-00

T:EP:RA:T4

Legend:

Taxpayer A =

Taxpayer B =

Plan X =

IRA Y =

Date 1 =

Date 2 =

Dear

This letter is in response to your letter dated , and supplemented by a letter dated , submitted on your behalf by your authorized representative, in which you request a letter ruling under section 403(b)(8) of the Internal Revenue Code (the Code).

Your representative has submitted the following facts and representations:

Taxpayer A, was born on Date 1, 1933, and died on Date 2, 2002. Taxpayer A was married to Taxpayer B.

Taxpayer A participated in Plan X, a plan qualified under section 403(b) of the Code. Taxpayer A had designated his estate as the beneficiary of his interest in Plan X.

Pursuant to the will of Taxpayer A, Taxpayer B was named the sole executor of Taxpayer A's estate.

The provisions of Taxpayer A's will provided, in relevant part, that after payment of Taxpayer A's debts and funeral expenses, the remainder of Taxpayer A's estate goes to Taxpayer B.

Taxpayer B, in her capacity as sole executor of Taxpayer A's estate, intends to receive the proceeds of Taxpayer A's interest in Plan X and distribute those proceeds to herself, in accordance with the terms of Taxpayer A's will. After receipt of those Plan X proceeds, Taxpayer B intends to rollover those proceeds into IRA Y, within 60 days of receipt of such proceeds.

Based upon the above, you request:

> That Taxpayer B is eligible to rollover Taxpayer A's Interest in Plan X into IRA Y set-up and maintained in her name pursuant to section 403(b) of the Code, as long as the rollover occurs no later than the 60th day measured from the date said distribution is received by Taxpayer B as executrix 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 he 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 (c)(1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (c)(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 –

(1) 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

(2) 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 hardship distribution described in section 401(k)(2)(B)(I)(IV).

Section 402(c)(8)(B) of the Code defines an 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) does 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, 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) 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 to a section 408(b) individual retirement annuity.

In general, with respect to distributions received after December 31, 2001, the Economic Growth and Tax Relief Reconciliation Act of 2001 removed the limitation in section 402(c)(9) of the Code applicable to a surviving spouse's right to transfer amounts referenced immediately above.

Section 1.402(c)-2 of the Income Tax 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

Section 401(a)(31) of the Code provides that a plan qualified within the meaning of section 401(a) of the Code must provide that a plan participant who is entitled to receive an eligible rollover distribution must be permitted to elect to have such eligible rollover distribution be paid directly to an eligible retirement plan including an IRA.

In short, a direct transfer, as that term is used section 401(a)(31) of the Code, is treated as a distribution followed by a rollover.

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

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

Section 403(b)(10) of the Code provides, in relevant part, that requirements similar to the requirements of sections 401(a)(9) and 401(a)(31) of the Code apply to annuities described in section 403(b) of the Code.

Section 1.403(b)-2 of the Income Tax 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 Income Tax Regulations, Q&A-1, further provides, in short, that the rules with respect to rollovers in Code 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 Code section 403(b) annuity 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 would not be eligible to roll over the qualified annuity proceeds into her own IRA.

In this case, Taxpayer A's estate is the beneficiary of Taxpayer A's interest in Plan X. Taxpayer A's interest will be paid to Taxpayer B as the executrix of Taxpayer A's estate. Pursuant to the provisions of Taxpayer A's Last Will and Testament, as sole beneficiary of Taxpayer A's estate, Taxpayer A's interest in Plan X will be rolled over into IRA Y set-up and maintained by Taxpayer B. Said rollover will occur no later than the 60th day following he date on which said distribution is made from Plan X to Taxpayer B as executrix of Taxpayer A's estate.

As noted above, the distributions from Plan X referenced herein will be the only distributions made from Plan X. Furthermore, Taxpayer A had not attained age 70 ½ at the time of death, and, if alive, would still not have attained age 70 ½. Thus, said distribution(s) are not ineligible to be treated as an "eligible rollover distribution" under section 402(c)(4)(A) of the Code which applies to distributions of section 403(b) annuities pursuant to section 403(b)(8) of the Code.

As such, with respect to your ruling request, the Service concludes that it will not apply the general rule referenced herein and will treat Taxpayer B, Taxpayer A's surviving spouse, as having received Taxpayer A's interest in Plan X, to the extent the amounts

standing under Plan X exceeds the amounts required to be distributed pursuant to section 401(a)(9) of the Code, if any, from Taxpayer A and not from Taxpayer A's estate.

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

> That Taxpayer B is the sole beneficiary of Taxpayer A's interest in Plan X and is eligible to rollover the distribution of those proceeds into IRA Y set-up and maintained in her name pursuant to section 403(b) of the Code, as long as the rollover occurs no later than the 60th day measured from the date said distribution is received by Taxpayer B as executrix of Taxpayer A's estate. Alternatively, said distributions may be directly transferred into IRA Y set-up and maintained in the name of Taxpayer B.

This ruling is based on the assumption that Plan X either has or will meet the requirements of section 403(b) of the Code at all times relevant thereto. In addition, it assumes that IRA Y will meet the requirements of section 408(a) of the Code at the time the proceeds from Plan X are received by Taxpayer B.

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.

A copy of this ruling is being sent to your authorized representative in accordance with a power of attorney on file with this office.

Sincerely yours,

Alan Pipkin, Manager
Employee Plans Technical Group 4
Tax Exempt & Government Entities

Enclosures:
Deleted Copy of Letter
Notice 437

cc: