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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Uniform Issue List: 402.03-00

JUL 2 2 2004

SE:T:EP:RA:T3

Legend:

Company M =

Plan X =

Custodial C =

Dear Mr. :

This is in response to correspondence dated March 3, 2004, as supplemented by correspondence dated July 12, 2004, submitted on your behalf by your authorized representative, in which you requested a letter ruling regarding a distribution from Plan X.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

You were employed by Company M. You were a participant in Plan X, which was a retirement plan maintained by Company M for the benefit of its employees. Your entire account in Plan X was comprised of shares of Company M stock. On December you terminated from employment with Company M.

Prior to your separation, you consulted with a financial advisor with Custodian C. After discussing various options regarding the pending Plan X distribution, it was determined that the distribution would qualify as a lump sum distribution and be eligible for the special tax treatment available for the net unrealized appreciation attributable to the Company M securities. In August you met with the financial advisor to formalize the plan for distribution and you both agreed that you would elect to have your Company M stock in Plan X distributed directly to you.

In December you began to finalize your plan to separate from employment with Company M and on December 15, you met with your financial advisor and completed the paperwork to establish a personal account with Custodian C for the sole purpose of receiving your distribution from Plan X. After your separation from service, you contacted Company M concerning your retirement and requested written notification. Your understanding was that you would not receive written notification and all questions would be handled telephonically. On January 20, you contacted your financial advisor to inquire as to how your Plan X employer securities should be titled. Your financial advisor told you to use "Custodian C, for your benefit, IRA". Immediately after this conversation with your financial advisor, you telephoned Company M to initiate

your Plan X distribution. During this conversation with a representative of Company M, you were informed that the election to roll over your Plan X distribution into an Individual Retirement Arrangement (IRA) was irrevocable. When the Company M representative asked you for the titling information to be used for the stock in your Plan X account, you responded with the information given to you by your financial advisor.

On January 22, your financial advisor realized that he gave you incorrect titling information for the stock. You and your financial advisor contacted Company M and requested that the titling information be changed. On January 23, you received the required written notification of your distribution options from Plan X. On January 28, you and your financial advisor again contacted Company M in an attempt to have the Plan X distribution reclassified and the shares reregistered to you personally. Company M informed you that the distribution election was irrevocable. Your account balance of Company M stock was distributed from Company M on January 22, You subsequently received your Plan X distribution and rolled over this distribution into an IRA on February 3,

Based on these facts and representations, you request a ruling that you be permitted to revoke the rollover election and treat the Company M stock that was distributed as if it had been distributed directly to you from Plan X as a lump sum distribution under section 402(e)(4)(D) of the Internal Revenue Code, thus making the distribution eligible for special tax treatment under section 402(e)(4)(B) of the Code on your 2004 Federal tax return.

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 of the Code.

Section 402(c) of the Code defines and provides the rules applicable to rollovers from exempt trusts.

> Section 402(c)(1) of the Code provides that if—
>
> (A) any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution,
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> (B) the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and
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> (C) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(e)(4)(A) of the Code provides that in the case of a distribution other than a lump sum distribution, the amount actually distributed to any distributee from a trust described in section 401(a) shall not include any net unrealized appreciation in employer securities attributable to amounts contributed by the employee.

Section 402(e)(4)(B) of the Code provides that in the case of any lump sum distribution which includes employer securities, there shall be excluded from gross income the net unrealized appreciation attributable to that part of the distribution which consists of employer securities.

Section 402(e)(4)(D) of the Code defines the term "lump sum distribution", in part, as a distribution or payment within one taxable year of the recipient of the balance to the credit of an employee which becomes payable to the recipient on account of the employee's death, after the employee attains age 59 ½, on account of the employee's separation from service, or after the employee has become disabled, from a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501.

Section 1.402(c)-2, Question & Answer-13 of the Income Tax Regulations provides that in order for a contribution of an eligible rollover distribution to an individual retirement plan to constitute a rollover and, thus, to qualify for current exclusion from gross income, a distributee must elect, at the time the contribution is made, to treat the contribution as a rollover contribution. An election is made by designating to the trustee, issuer, or custodian of the eligible retirement plan that the contribution is a rollover contribution. This election is irrevocable. Once any portion of an eligible rollover distribution has been contributed to an individual retirement plan and designated as a rollover distribution, taxation of the withdrawal of the contribution from the individual retirement plan is determined under section 408(d) rather than under section 402 or 403. Therefore, the eligible rollover distribution is not eligible for the exclusion from gross income for net unrealized appreciation on employer stock.

Pursuant to section 1.402(c)-2 of the Regulations, an employee's election to treat a contribution of an eligible rollover distribution to an IRA as a rollover contribution is irrevocable. Therefore, with regard to your ruling request, we conclude that you are not permitted to revoke the rollover election and treat the Company M stock that was distributed as if it had been distributed directly to you from Plan X as a lump sum distribution under section 402(e)(4)(D) of the Code, and therefore the distribution is not eligible for special tax treatment under section 402(e)(4)(B) of the Code on your 2004 Federal tax return.

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 which may be applicable thereto.

This letter expresses no opinion as to whether Plan X satisfies the requirements for qualification under section 401(a) of the Code.

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.

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative. If you wish to inquire about this ruling, please contact .
Please address all correspondence to .

Sincerely yours,

/S/

, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose