199928031

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Significant index no: 402.01-01
402.08-00

Contact Person:

Telephone Number:

In Reference to:
OP:E:EP:T:3

Date:
APR 22 1999

LEGEND:

Taxpayer A:

Company B:

Plan X:

Date 1:

Month 2:

Quantity C:

Quantity D:

Sum E:

Dear Mr. :

This is in response to the , letter submitted on your behalf by your authorized representative, as supplemented by correspondence dated , in which you request a letter ruling under section 402(e)(4)(D) of the Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A, who has not attained age 70 1/2, terminated employment with Company B, his employer on Date 1. During Month 2, Taxpayer A received a single sum distribution of the full amount standing to his credit under Plan X, a plan sponsored by Company B which your authorized representative asserts meets the qualification requirements found in Code section 401(a).

In accordance with Taxpayer A's instructions, Quantity C shares of Company B common stock were distributed directly to Taxpayer A. In accordance with provisions of Plan X, Quantity D shares of Company B common stock and Sum E of cash were directly transferred into an individual retirement arrangement (IRA) maintained in the name of Taxpayer A.

135

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

> The distribution, within one taxable year, of Taxpayer A's entire account balance from Plan X, either directly to Taxpayer A or to Taxpayer A's IRA, as described above, constitutes a qualifying lump sum distribution as that term is defined in Code section 402(e)(4)(D) for purposes of Code section 402(e)(4)(B).

With respect to your ruling request, Code section 402(a) provides that an amount actually distributed to a taxpayer by a trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the taxpayer in the year of distribution except as otherwise provided in section 402.

Code section 402(e)(4)(D) provides that the term "lump sum distribution" has the meaning given such term by subsection (d)(4)(A) (without regard to the minimum period of service requirement in subsection (d)(4)(F)). Code section 402(d)(4)(A) provides, in pertinent part, that the term "lump sum distribution" means the distribution or payment, within one taxable year of the recipient, of the balance to the credit of the employee which becomes payable on account of the employee's separation from service, from a trust which forms part of a plan described in Code section 401(a) and which is exempt from tax under Code section 501(a).

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

Code section 402(e)(4)(C) provides that, for purposes of subparagraph (B), net unrealized appreciation and the resulting adjustments to basis shall be determined in accordance with regulations prescribed by the Secretary.

Code section 402(c)(4) provides that the term "eligible rollover distribution" means any distribution to an employee of all or any portion of the balance to the credit of the

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) 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, generally, 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 401(a)(31)(A) of the Code provides that a trust shall constitute a section 401(a) qualified trust only if the plan of which such trust is a part provides that if the distributee of any eligible rollover distribution-

(i) elects to have such distribution paid directly to an eligible retirement plan, and

(ii) specifies such eligible retirement plan to which such distribution is to be paid (in such form and at such time as the plan administrator may prescribe),

such distribution shall be in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified.

Section 401(a)(31)(B) of the Code provides that subparagraph (A) shall apply only to the extent that the eligible rollover distribution would be includible in gross income if not transferred as provided in subparagraph (A)

137

(determined without regard to sections 402(c) and 403(a)(4)).

The term "eligible rollover distribution" when used in section 401(a)(31) of the Code has the same meaning as when used in section 402(c) of the Code.

The term "eligible retirement plan" when used in section 401(a)(31) of the Code includes IRAs defined in sections 408(a) and 408(b) of the Code.

Generally, a direct trustee-to-trustee transfer described in section 401(a)(31) of the Code constitutes a "direct rollover" of an "eligible rollover distribution" and is entitled to tax-deferred treatment pursuant to section 402(c) of the Code.

Section 1.401(a)(31)-1 of the Income Tax Regulations, Question and Answer 5, provides that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is not currently includible in the distributee's gross income under Code section 402(c).

Section 1.401(a)(31)-1 of the Income Tax Regulations, Question and Answer 14, provides, in pertinent part, that a direct rollover is a distribution and rollover of the eligible rollover distribution and not a transfer of assets and liabilities.

In this case, Taxpayer A, who has not attained age 70 1/2, separated from the service of Company B. As a result of said separation, Taxpayer A received a single sum distribution of the full amount standing to his credit under Plan X. Taxpayer A's distribution consisted, in part, of securities of Company B.

Taxpayer A's distribution is a "lump sum distribution" as that term is used in Code section 402(e)(4)(D). Furthermore, neither the Code nor the regulations promulgated thereunder preclude a distribution from being treated as a lump sum distribution under Code section 402(e)(4)(D) for purposes of section 402(e)(4)(B) even if a portion of the distribution is either rolled over or directly transferred into an IRA.

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

> The distribution within one taxable year of Taxpayer A's entire account balance from Plan X

either directly to Taxpayer A or to Taxpayer A's IRA, as described above, constitutes a qualifying lump sum distribution as that term is defined in Code section 402(e)(4)(D) for purposes of Code section 402(e)(4)(B).

This letter ruling assumes that Taxpayer A's Plan X distribution was made in accordance with the terms of Plan X. It also assumes that Taxpayer A's IRA, referenced above, meets the requirements of Code section 408(a).

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

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Chief, Employee Plans
Technical Branch 3

Enclosures:

Deleted copy of letter ruling
Form 437