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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Iniform Issue List: 402.08-00

Contact Person:

Telephone Number:

In Reference to:
T:EP:RA:T1

Date:
9/21/2000

Legend:

Taxpayer A =

Employer B =

Plan X =

Dear :

This is in response to your letter dated March 28, 2000, as supplemented by additional correspondence dated June 8, 2000, and July 24, 2000, from your authorized representative, in which you request a private letter ruling from the Internal Revenue Service.

The following facts and representations have been submitted on your behalf:

Employer B established Plan X in 1965. Taxpayer A, an employee of Employer B, participates in Plan X. Since the adoption date of the Plan, normal retirement age in the Plan has been the later of age 65 or fulfilling 10 years of participation in the Plan.

The Employer intends to adopt an amendment to the Plan which will lower normal retirement age to age 60. The amendment will provide for in-service distributions to participants who attain the new normal retirement age, elect to take an in service lump sum distribution, and agree that their participation in Plan X will terminate as of the date of distribution.

Upon attaining age 60, on or after September 30, 2000, Taxpayer A intends to elect to take an in-service distribution of his entire account balance in Plan X and have the amount rolled over to an individual retirement arrangement ("IRA") established at an

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independent financial institution in the form of a direct rollover under section 401(a)(31) of the Internal Revenue Code ("Code").

Based on the foregoing facts and representations, you have requested the following ruling:

That the in-service distribution to Taxpayer A upon attaining age 60, which will be rolled over to an IRA at an independent financial institution, will be excluded from Taxpayer A's income as a rollover distribution from a qualified plan to an IRA, pursuant to sections 401(a)(31) and 402(c) of the Code.

Code section 401(a)(31)(A) states a trust shall not constitute a qualified trust under this section unless 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 the eligible retirement plan to which such distribution is to be paid (in such form and at such as the plan administrator may prescribe), such distribution shall be made in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified. Subsection B states 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 (determined without regard to sections 402(c) and 403(a)(4)). Subsection C states that eligible rollover distribution has the meaning provided by section 402(f)(2)(A). Subsection D states that eligible retirement plan has the meaning given such term by section 402(c)(8)(B), except that a qualified trust shall be considered an eligible retirement plan only if it is a defined contribution plan, the terms of which permit the acceptance of rollover distributions.

With respect to direct rollovers, section 1.402(c)-2(b)(1) of the regulations requires that qualified plans provide a distributee of an eligible rollover distribution the option to elect to have the distribution paid directly to an eligible retirement plan. Subsection 2 states that Code section 402(f) requires the plan administrator of a qualified plan to provide, within a reasonable time before making an eligible rollover distribution, a written explanation to the distributee of the distributee's right to elect a direct rollover and the withholding consequences of not making that election. Subsection 3 states that if a distributee of an eligible rollover distribution does not elect to have the eligible rollover distribution paid directly from the plan to an eligible retirement plan in a direct rollover under Code section 401(a)(31), the eligible rollover distribution is subject to 20 percent income tax withholding.

1.401(a)(31)-1, Q&A-1 of the regulations states that to satisfy Code section 401(a)(31), a plan must provide that if the distributee of any eligible rollover distribution elects to have the distribution paid directly to an eligible retirement plan, and specifies

the eligible retirement plan to which the distribution is to be paid, then the distribution will be paid to that eligible retirement plan in a direct rollover described in Q&A-3. The plan must give the distributee the option of having his or her distribution paid in a direct rollover to an eligible retirement plan specified by the distributee. Subsection Q&A-3 states that a direct rollover that satisfies Code section 401(a)(31) is an eligible rollover distribution that is paid directly to an eligible retirement plan for the benefit of the distributee.

Code section 408(c)(2) states that in the case of any eligible rollover distribution, the maximum amount transferred to which the preceding sentence refers shall not exceed the portion of such distribution which is includible in gross income. Code section 402(f)(2)(A) states that eligible rollover distribution has the same meaning as Code section 403(a)(4) which cites Code section 402(a)(4) as providing the definition. Code(c)(1), in general, excludes from income any portion of the balance to the credit of an employee in a qualified plan paid to the employee in an eligible rollover distribution if such employee transfers the distribution to an eligible retirement plan. Code section 402(c)(4) defines the term "eligible rollover distribution" as any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust, except for certain exceptions, none of which are applicable hereto.

Code section 402(c)(8)(B) defines "eligible retirement plan" as (i) an individual retirement account described in Code section 408(a), (ii) an individual retirement annuity described in Code section 408(b) (other than an endowment contract), (iii) a Code section 401(a) qualified retirement plan, and (iv) an annuity plan described in Code section 403(a).

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

In the present case, Taxpayer A will elect a direct rollover and have all amounts in Taxpayer A's account balance paid directly from Plan X to an eligible retirement plan, the IRA. Therefore, we conclude, based on the facts and circumstances, that the distribution to Taxpayer A which is paid directly to A's IRA will constitute a direct rollover from a qualified plan to an IRA and will be excluded from Taxpayer A's income in the year rolled over.

These rulings are based on the assumption that Plan X satisfies the requirements of Code section 401(a) and that Taxpayer A's IRA meets the requirements of Code section 408 at all times relevant to the proposed transaction.

This ruling is directed only to the Taxpayer who requested it. Code section 6110(k)(3) provides that it may not be used or cited by others as precedent.

A copy of this letter has been sent to your authorized representative in accordance with the power of attorney on file in this office.

Sincerely yours,

John Swieca

Manager, Employee Plans
Technical Branch 1
Tax Exempt and Government
Entities Division

Enclosures:
Deleted copy of letter
Notice of Intention to Disclose

cc:

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