Internal Revenue Service

Department of the Treasury

Washington, DC 20224 **200110034**

UIC: 401.06-00
401.06-01

Contact Person:

Telephone Number:

In Reference to:
T:EP:RA:T3

Date:
DEC 13 2000

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Corporation M:

Company N:

Plan X:

Plan Y:

Dear :

This is in response to the , letter submitted on your behalf by your authorized representative, as supplemented by correspondence dated and , in which you request a letter ruling under section 401(a)(9) of the Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A formed Corporation M on July 1, 1970. Corporation M established Plan X, a defined benefit pension plan, on December 29, 1976. Plan X was amended and restated as Plan Y, a profit-sharing plan, on July 1, 1984, effective as of that date.

Your authorized representative has asserted on your behalf that Plans X and Y are qualified under Code section 401(a).

On December 14, 1983, Taxpayer A made an election with respect to benefits due him under Plan X. Under that election, Taxpayer A elected to receive Plan X benefits in one lump sum as soon as administratively possible after the close of the Plan year in which he reaches the age which is one year less than his life expectancy determined as of the date he retires.

Additionally, under that election, Taxpayer A elected to have his death benefits paid in one lump sum as soon as administratively possible after the close of the Plan year in which he dies.

Finally, under that election, Taxpayer A named Taxpayer B as his primary beneficiary and Taxpayer C as his secondary beneficiary.

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On July 1, 1984, Taxpayer A, acting in his capacity of President of Corporation M, directed that the trustee of Plan X transfer "the total net assets" of Plan X to Company N, the trustee of Plan Y.

Your authorized representative has provided documentation to the Internal Revenue Service that indicates that the trustee-to-trustee transfer of assets authorized under the July 1, 1984, directive apparently occurred prior to January 1, 1985.

Your authorized representative has also asserted on your behalf that the assets transferred from Plan X to Plan Y have been accounted for separately from other assets held in Plan Y.

Finally, your authorized representative has asserted that the above-referenced transfer from Plan X to the trustee of Plan Y complied with the requirements of Code section 414(l).

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

> That the transfer of Taxpayer A's accrued benefit under Plan X to Plan Y pursuant to the July 1, 1984, Corporation M directive did not revoke Taxpayer A's December 14, 1983, TEFRA section 242(b)(2) election entered into with respect to Taxpayer A's Plan X benefit.

With respect to your ruling request, Code section 401(a)(9), in general, provides the rules governing minimum required distributions from plans qualified within the meaning of Code section 401(a).

Section 401(a)(9) of the Code was amended by section 242 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248) (1982-2 C.B. 462) (TEFRA and was further amended by section 521 of the Tax Reform Act of 1984 (Pub. L. 98-369) (TRA'84) and by sections 1121 and 1852 of the Tax Reform Act of 1986 (Pub. L. 99-514) (TRA'86). Section 242(b)(2) of TEFRA provided a transition rule that was not affected by the later amendments to section 401(a)(9).

Section 242(b)(1) of TEFRA provides that amendments to section 401(a)(9) of the Code made by section 242(a) of TEFRA shall apply to plan years beginning after December 31, 1983. However, section 242(b) of TEFRA provides the following transitional rule:

> TRANSITION RULE: A trust forming part of a plan shall not be disqualified under paragraph (9) of section 401(a) of the Internal Revenue Code of 1954, as amended by subsection (a) by reason of distributions under a designation (before January 1, 1984) by any employee of a method of distribution:

(A) which does not meet the requirements of such paragraph (9), but

(B) which would not have disqualified such trust under paragraph (9) of section 401(a) of such Code as in effect before the amendment made by subsection (a).

Notice 83-23, 1983-2 C.B. 418, provides guidance with respect to distributions that may be made by a qualified plan under the transition rule of section 242(b)(2) of TEFRA. In order for the transitional rule in section 242(b)(2) of TEFRA to apply to a distribution from a qualified trust, the distribution must be made in accordance with the following requirements as set forth in Notice 83-23:

(1) The distribution by the trust is one which would not have disqualified the trust under section 401(a)(9) of the Code as in effect immediately prior to the effective date of 242(a) of TEFRA.

(2) The distribution is in accordance with a method of distribution designated by the employee whose interest in the trust is being distributed or, if the employee is deceased, by a beneficiary of such employee.

(3) Such designation is in writing, is signed by the employee or the beneficiary, and is made before January 1, 1984.

(4) The employee whose interest in the trust is being distributed has accrued a benefit under the plan of which the trust is a part as of December 31, 1983.

(5) The method of distribution designated by the employee specifies the following:

(a) the form of the distribution (lump sum, level dollar annuity, formula annuity, specified percentage payment per year, etc.),

(b) the time at which distributions will commence (upon retirement, at a stated age, etc.),

(c) the period over which distributions will be made (over the employee's life expectancy, over a stated number of years, etc.), and

(d) in the case of any distribution upon the employee's death, the beneficiaries of the employee listed in order of priority.

The designation must, in and of itself, provide sufficient information to fix the time, and the formula for the definite determination of plan payments. The designation must be complete and not allow further choice.

A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the information described in items (5)(a)-(d) above with respect to the distributions to be made upon the death of the employee.

If a designation made in accordance with the above requirements is revoked by an employee or, if the employee is deceased, by his beneficiary, subsequent to December 31, 1983, the transitional rule in section 242(b)(2) of TEFRA will not apply to the distribution and the employee's interest must be distributed in accordance with section 401(a)(9) as amended by section 242(a) of TEFRA. Any change in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).

Section 1.401(a)(9)-1 of the Proposed Income Tax Regulations, Question and Answer J-2, provides, in relevant part, that if an amount is transferred from one plan (transferor plan) to another plan (transferee plan), the amount transferred may be distributed in accordance with a section 242(b)(2) election made under the transferor plan if the employee did not elect to have the amount transferred and if the amount transferred is separately accounted for by the transferee plan.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A J-3, provides, in relevant part, that an amount distributed from one plan and rolled over into another plan may not be distributed in accordance with a section 242(b)(2) election entered into under the distributing plan.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A J-2, provides, in relevant part, that if an employee elects to transfer amounts from one plan under which a section 242(b)(2) election was made to another made, the transfer shall be treated as a distribution and rollover for purposes of Qs&As J-2 and J-3.

From the evidence presented, the Service believes that the beneficiary designation made by Taxpayer A does satisfy the requirements of section 242(b)(2) of TEFRA and Notice 83-23.

The issue presented in this case is whether the transfer of assets from Plan X's trust to Plan Y's trust constitutes an elective

transfer as that term is used in section 1.401(a)(9)-1 of the proposed regulations, Qs&As J-2 and J-3.

In this case, the pre-1985 transfer of Plan X assets to the trust of Plan Y was made pursuant to the July 1, 1984 Corporation M directive signed by the President of Corporation M. Taxpayer A, as a Plan X participant, did not direct that his interest in Plan X be transferred to Plan Y.

Based on the above, the Service concludes that the transfer of Taxpayer A's accrued benefit from Plan X to Plan Y did not constitute an "elective transfer" as that term is used in the questions and answers of the proposed regulations referenced above.

Thus, based on the above facts and representations, the Service concludes as follows with respect to your ruling request:

That the transfer of Taxpayer A's accrued benefit under Plan X to Plan Y pursuant to the July 1, 1984, Corporation M directive did not revoke Taxpayer A's December 14, 1983, TEFRA section 242(b)(2) election entered into with respect to Taxpayer A's Plan X benefit.

This ruling letter is based on the assumption that Plans X and Y have met the requirements of Code section 401(a) at all times relevant thereto.

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
Manager, Employee Plans
Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of letter ruling
Form 437