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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

UICs: 402.00-00
402.08-00
501.00-00

Contact Person:

Telephone Number:

In Reference to:
T:EP:RA:T3

Date:

APR 12 2001

LEGEND:

Company A:

Court B:

Company C:

Fund F:

Subfund G:

Subfund H:

Plan X:

Plan Y:

Month 1:

Date 2:

Date 3:

Date 4:

Date 5:

Amount 1:

Amount 2:

Amount 3:

Ladies and Gentlemen:

This is in response to the , letter filed by your authorized representative on your behalf, as supplemented by correspondence dated March 12, 2001, in which you request several letter rulings under sections 401 and 402 of the Internal Revenue Code. The following facts and representations support your ruling request.

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During Month 1, 1999, Company A and Plans X and Y were named as defendants in a class action suit filed by participants or former participants of Plans X and Y with Court B. On Date 2, 1999, Court B designated the suit as a class action. The certified class consisted of the following two subclasses:

1. All individuals who were employed on the United States Dollar payroll by Company A or one of its subsidiaries and who have executed releases releasing claims against Company A, its subsidiaries, affiliates, successors, assigns, directors, officers, employees, or agents, and who (i) had vested benefits under Plan X and/or Plan Y; and (ii) have retired or terminated under Plan X and/or Plan Y, (a) after completing an hour of service on or after January 1, 1994 and prior to their normal retirement date as defined in Plan X and in Plan Y and have less than 33 1/3 years of benefit service, as defined in Plan X and/or Plan Y, and (b) before April 30, 2000.

2. All individuals who were employed on the United States Dollar payroll by Company A or one of its subsidiaries and who have not executed releases releasing claims against Company A, its subsidiaries, affiliates, successors, assigns, directors, officers, employees, or agents, and who (i) had vested benefits under Plan X and/or Plan Y; and (ii) have retired or terminated under Plan X and/or Plan Y, (a) after completing an hour of service on or after January 1, 1994 and prior to their normal retirement date as defined in Plan X and in Plan Y and have less than 33 1/3 years of benefit service, as defined in Plan X and/or Plan Y, and (b) before April 30, 2000.

Your authorized representative asserts that the affected class consisted of several thousand plan participants or former plan participants.

The class action alleged that, beginning in 1994, affected Plan X and Plan Y participants, who are members of the class, received retirement benefits from the plans which were miscalculated. The miscalculation involved, in short, an error involving the computation of the social security offset used in calculating Plan X and Plan Y benefits. Additionally, it was alleged that the computation of the social security offset did not conform to the Plan X and Plan Y documents and resulted in reduced benefits.

The class action alleged that, in improperly computing the social security offsets of the class members, the defendants violated provisions of the Employees Retirement Income Security Act of 1974, as amended (ERISA), and also committed breaches of contract and acts of common law conversion. Specifically, the plaintiffs alleged, in part, that the defendants breached their fiduciary duties to members of the class in the way they computed the amount(s) of their social security offsets.

On Date 3, 2000, a settlement was reached between members of the plaintiff class and all named defendants including Company A and Plans X and Y.

Under the terms of the Date 3, 2000, court-approved settlement agreement, Plans X and Y were required to pay Amount 1 and interest at the rate of five

(5) percent per annum from Date 3, 2000, until 20 days after the effective settlement date (Date 4, 2000) to Fund F.

Pursuant to the Date 3, 2000, Settlement Agreement, Fund F has been divided into Subfund G and Subfund H. Subfund G, which received 80% of Amount 1, is held in escrow with Company C and was established to increase pension benefits to Plan X and Plan Y participants who had retired or terminated employment on or before April 30, 2000. Subfund H, which received 20% of Amount 1, is held in a Memorandum Account of the Company A plans, Plans X and Y, and was established to increase benefits to Plan X and Plan Y participants who would retire or terminate employment on or after May 1, 2000, but before May 1, 2002.

In the event that there are funds remaining in Subfund H on May 1, 2002, the fund balance will be transferred to Subfund G and distributed to eligible class members. Your authorized representative has asserted that even if the entire 20% of Amount 1 held in Subfund H were to be transferred to Subfund G, the former participants on whose behalf funds are being held in Subfund G would, in no event, receive benefits under either Plan X or Plan Y which would exceed the plan benefits which they would have received in the absence of the fiduciary breaches alleged in the Month 1, 1999, class action complaint referenced above.

Amount 1, less certain fees and expenses referenced in the settlement agreement, was to be used solely to increase the payments made to members of the class. Your authorized representative has asserted, on your behalf, that the settlement amount, Amount 1, was fully funded out of the assets of Plans X and Y on Date 5, 2000, which was 20 days after Date 4, 2000, and no portion of the settlement amount came from the general assets of Company A. As of the date of this ruling request, the settlement funds which remain in escrow in Subfund G are invested in United States Treasury Securities.

Subfunds G and H are responsible for recalculating and disbursing increased pension benefits to affected class members. Subfunds G and H will make distributions in the same manner and in the same form as specified under relevant provisions of Plans X and Y.

Your authorized representative has asserted on your behalf that Company A either is, or, at times relevant to this ruling request, was a sponsor of Plan X and of Plan Y. Additionally, your authorized representative asserts that Plans X and Y are qualified under Code section 401(a) and their trusts exempt under Code section 501(a). Furthermore, your authorized representative asserts that Plans X and Y, and their related trusts, are still in existence and have not been terminated.

Additionally, your authorized representative has asserted on your behalf that Subfund G was intended to constitute an extension of the pension plans (Plans X and Y) which were defendants in the above referenced class action. Furthermore, your authorized representative has asserted that Subfund G was established solely to pay benefits to plan participants who are members of the class referenced above. Your authorized representative has also asserted that no Form 1099Rs were issued to members of the class referenced above in conjunction with the establishment of Subfund G. Finally, your authorized

representative has asserted that it is the responsibility of the Administrative Agents of Subfund G to issue Form 1099Rs when payments are made from Subfund G to affected class members/plan participants.

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

(1) That Subfund G created pursuant to the Date 3, 2000, court-approved settlement agreement is treated as a part or conduit of Plans X and Y and their related trusts and any earnings on amounts held in Subfund G pursuant to the Date 3, 2000, settlement agreement are exempt from tax pursuant to Code section 501;

(2) that distributions from Subfund G qualify for treatment in accordance with the provisions of Code section 402;

(3) that distributions from Subfund G to claimants thereof are eligible for tax-deferred rollover treatment pursuant to Code section 402(c); and

(4) that the 60-day rollover period prescribed in Code section 402(c)(3) commences from the date a distribution from Subfund G is received by the payee or distributee thereof.

With respect to your ruling requests, Code section 402(a)(1) provides that, except as otherwise provided in this section, any amount actually distributed to any distributee by an 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 (relating to annuities).

Code section 402(c)(1) provides that, if an employee transfers any portion of an eligible rollover distribution into an eligible retirement plan, the amount so transferred shall not be includible in income for the taxable year in which paid.

Code section 402(c)(4) provides that an "eligible rollover distribution" is a distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust; except that such term shall not include-

(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 specified period of 10 years or more, and

(B) any distribution to the extent such distribution is required under section 401(a)(9).

Code section 402(c)(8)(B) defines an eligible retirement plan to include, an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b); a qualified trust, and an annuity plan described in Code section 403(a).

Code section 402(c) 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.

In this case, the members of the plaintiff class in the class action referenced above were entitled to receive benefits from either Plan X or/and Plan Y. The class members received distributions which their suit, referenced above, alleged were improperly computed due to errors in calculating their Social Security offsets as provided under the provisions of Plans X and Y. The settlement proceeds represent amounts to which the class members assert they are entitled under the provisions of Plans X and Y, and, as noted above, the settlement proceeds were paid into Fund F, and subsequently transferred into either Subfund G or Subfund H, out of assets held by the trusts of Plans X and Y.

Code section 402(c), by its terms, refers to distributions made from a Code section 401(a) retirement plan. The distributions of Amount 2 currently held in Subfund G, in this case, will be made from Subfund G which is an extension of Plans X and Y. Subfund G was created under an order entered by Court C as part of the settlement resolving the above-referenced class action for the sole purposes of holding additional amounts due and making distributions to affected Plan participants in Plans X and Y, or their beneficiaries, who were members of the class. Amounts in Subfund G were transferred from the separate trusts of Plans X and Y, and in the absence of the conduct alleged in the class action complaint, would have been paid to participants in Plans X and Y, which your authorized representative asserts are Code section 401(a) plans, directly from the trusts thereof.

Based on the facts presented in this particular case, Subfund G will be treated as holding assets of Plans X and Y. Thus, we believe that it is appropriate for distributions from Subfund G to qualify for Code section 402(c) treatment.

Therefore, with respect to your ruling requests, we conclude as follows:

(1) That Subfund G created pursuant to the Date 3, 2000, court-approved settlement agreement is treated as a part or conduit of Plans X and Y and their related trusts and any earnings on amounts held in Subfund G pursuant to the Date 3, 2000, settlement agreement are exempt from tax pursuant to Code section 501;

(2) that distributions from Subfund G qualify for treatment in accordance with the provisions of Code section 402;

(3) that distributions from Subfund G to claimants thereof are eligible for tax-deferred rollover treatment pursuant to Code section 402(c); and

(4) that the 60-day rollover period prescribed in Code section 402(c)(3) commences from the date a distribution from Subfund G is received by the payee or distributee thereof.

This ruling letter assumes that Plans X and Y either are or were qualified under Code section 401(a) at all times relevant thereto. It also assumes that each member of the plaintiff class referenced herein received distributions from either Plan X or Plan Y or both plans as asserted. Finally, it assumes that Subfund G consists solely of amounts transferred from the trusts of Plans X and Y and earnings thereon.

Pursuant to a power of attorney on file in this office, copies of this letter ruling are being sent to your authorized representative(s).

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Manager, Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of letter ruling
Form 437