Internal Revenue Service

Department of the Treasury

Washington, DC 20224

UICs: 402.00-00
402.08-00
501.00-00

200128057

Contact Person:

Telephone Number:

In Reference to:
T:EP:RA:T3

Date:

APR 16 2001

LEGEND:

Company A:

Court B:

Court C:

Fund F:

Plan X:

Month 1:

Date 2:

Date 3:

Amount 1:

Ladies and Gentlemen:

This is in response to the , letter filed by your authorized representative on your behalf, in which you request several letter rulings under section 402 of the Internal Revenue Code. The following facts and representations support your ruling request.

During Month 1, Company A and Plan X were named as defendants in a class action suit filed by participants or former participants of Plan X with Court B. On Date 2, 1998, Court B designated the suit as a class action. The certified class consisted of the following two subclasses:

1. All Plan participants (and, if they are deceased, their surviving spouses or beneficiaries) who from January 1, 1987 to the present, received lump sum distributions of their normal or later retirement benefits (accrued through December 22, 1994) that were calculated using interest rates greater than the applicable PBGC or deferred interest rates.

2. All Plan participants (and, if they are deceased, their surviving spouses or beneficiaries) who from January 1, 1985 to the present, received lump sum distributions of their early retirement benefits (accrued through December 22, 1994) that were calculated using interest rates greater than the applicable PBGC or deferred interest rates.

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The case was subsequently transferred to Court C.

Your authorized representative asserts that the affected class consisted of approximately 2100 plan participants or former plan participants.

The class action alleged that affected Plan X participants, who are members of the class, received lump sum retirement benefits which were miscalculated. The miscalculation involved, in part, use of a Pension Benefit Guarantee Corporation (PBGC) discount rate to compute normal and late retirement lump sum benefits that was higher than the rate that was required under the terms of Plan X, and, in part, failure to apply 100% of the Code section 417(e) interest rate to affected class members' subsidized early retirement annuity benefits when computing their lump sum distributions as required under the terms of Plan X.

The class action alleged that, in improperly computing the single sum distributions 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 (1) in the way they computed the amount(s) of their single sum distributions, and (2) by providing inaccurate information to members of the class concerning the way in which the single sum payments were calculated.

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

Under the terms of the Date 3, 2000, court-approved settlement agreement, Plan X was required to pay Amount 1 to Fund F within three (3) business days after preliminary approval of the settlement agreement. Amount 1, less certain fees and expenses referenced in the settlement agreement, was to be used solely to increase the single sum 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 Plan X, 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 remain in escrow in Fund F created under the Date 3 court-approved settlement agreement. The settlement agreement provides, in pertinent part, that any earnings on Amount 1 which remain in escrow in Fund F belong to Fund F. Fund F is responsible for recalculating and disbursing increased pension benefits to affected class members. Fund F will make distributions in the same manner and in the same form as specified under relevant provisions of Plan X.

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. Additionally, your authorized representative asserts that Plan X is qualified under Code section 401(a) and its trust exempt under Code section 501(a). Furthermore, your authorized representative asserts that Plan X and its related trust, are still in existence and have not been terminated.

Additionally, your authorized representative has asserted on your behalf that Fund F was intended to constitute an extension of the pension plan (Plan X) which was a defendant in the above referenced class action. Furthermore, your authorized representative has asserted that Fund F 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 Fund F. Finally, your authorized representative has asserted that it is the responsibility of the Administrative Agents of Fund F to issue Form 1099Rs when payments are made from Fund F 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 Fund F created pursuant to the Date 3, 2000, court-approved settlement agreement is treated as a part or conduit of Plan X and its related trust and any earnings on amounts held in Fund F pursuant to the Date 3, 2000, settlement agreement are exempt from tax pursuant to Code section 501;

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

(3) that distributions from Fund F 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 Fund F 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 lump sum distributions from Plan X. The class members received single sum distributions which their suit, referenced above, alleged were less than the distributions to which they were entitled under the provisions of Plan X. The settlement proceeds represent amounts to which the class members assert they are entitled under the provisions of Plan X, and, as noted above, the settlement proceeds were paid into Fund F out of assets held by the trusts of Plan X.

Code section 402(c), by its terms, refers to distributions made from a Code section 401(a) retirement plan. The distributions in this case will be made from Fund F which is an extension of Plan X. Fund F 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 Plan X, or their beneficiaries, who were members of the class. Amounts in Fund F were transferred from the separate trust of Plan X, and in the absence of the conduct alleged in the class action complaint, would have been paid to participants in Plan X, which your authorized representative asserts is a Code section 401(a) plan, directly from the trust thereof.

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

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

(1) That Fund F created pursuant to the Date 3, 2000, court-approved settlement agreement is treated as a part or conduit of Plan X and its related trust and any earnings on amounts held in Fund F pursuant to the Date 3, 2000, settlement agreement are exempt from tax pursuant to Code section 501;

(2) that distributions from Fund F qualify for treatment in

accordance with the provisions of Code section 402;

(3) that distributions from Fund F 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 Fund F is received by the payee or distributee thereof.

This ruling letter assumes that Plan X either is or was qualified under Code section 401(a) at all times relevant thereto. It also assumes that each member of the plaintiff class referenced herein received a single sum distribution from Plan X as asserted. Finally, it assumes that Fund F consists solely of amounts transferred from the trust of Plan X 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