DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200208031

NOV 26 2001

UICs: 401.06-00
401.06-02
408.03-00

T:EP:RA:UK

LEGEND:

Taxpayer A:

Taxpayer B:

State C:

Company M:

Trust T:

Subtrust U:

Subtrust V:

Plan X:

Date 1:

Date 2:

Amount 1:

Amount 2:

Dear Ms. :

This is in response to the , letter submitted on your behalf by your authorized representative, as supplemented by correspondence dated , in which you, through your representative, request letter rulings under sections 402(c) and 401(a)(9) of the Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 1, 1930, died on Date 2, 2000 without having reached his "required beginning date" as that term is defined in Code section 401(a)(9)(C). At the time of his death, Taxpayer A was a participant in Plan X which is sponsored by Company M. Taxpayer A was survived by his spouse, Taxpayer B.

The value of Taxpayer A's estate at his death was approximately Amount 1 of which Amount 2 approximated the value of his interest under Plan X.

Trust T is the named beneficiary of Taxpayer A's interest in Plan X. Upon the death of Taxpayer A, Trust T was divided into two subtrusts, Subtrust U and Subtrust V. Upon the death of Taxpayer A, Taxpayer B became the sole trustee of Trust T.

Article III(B) of Trust T provides that Subtrust U is to consist of (a) the surviving spouse's individual property, (b) the surviving spouse's interest in the grantor's marital property, and (c) the smallest fractional share of the remaining trust estate that, if added to the total value for federal estate tax purposes of all other interests in property that pass or have passed from the deceased's spouse to or in trust for the surviving spouse, and if includible in the deceased spouse's gross estate for federal estate tax purposes and qualified for the marital deduction will entirety eliminate (or reduce to the maximum possible extent) any federal estate tax at the death of the deceased spouse.

Subtrust V is to consist of the balance of the trust estate after determining the value of the property to be transferred to Subtrust U.

Article IV(B) of Trust T provides, in relevant part, that the trustee thereof shall pay to or apply for the benefit of the surviving spouse the net income of Subtrust U in quarterly or more frequent installments. The trustee shall also pay to or apply for the benefit of the surviving spouse any sums from the principal of Subtrust U that the trustee, in her discretion, considers necessary for the surviving spouse's proper health, support, comfort, enjoyment and welfare. In addition, the trustee shall pay to the surviving spouse as much of the principal of Subtrust U as the surviving spouse shall request in writing.

Article V(A)(1) of Trust T provides, in short, that the trustee thereof shall pay to or apply for the benefit of the surviving spouse and the grantor's issue the net income of Subtrust V that the trustee, in her discretion, considers necessary for their health, education, support and maintenance in accordance with their accustomed standard of living in quarterly or more frequent installments. Article V(A)(2) of Trust T provides that the trustee may also pay to or apply for the benefit of the surviving spouse and any surviving issue any sums from the principal of Subtrust V that the trustee, in her discretion, considers necessary for their care, comfort, health, support, maintenance, education, purchases of homes, purchases of businesses, or other worthwhile purpose.

Article V(B) of Trust T provides for distributions from Subtrust V after the death of the surviving spouse. All potential beneficiaries of amounts under Article V(B) are human beings, and all are younger than Taxpayer B.

Article III(D)(4) of Trust T provides, in short, that the trustee thereof may use her discretion in funding the various subtrusts created under the terms of Trust T.

Article VII of Trust T provides, in summary, that after the death of the first of Taxpayer A or Taxpayer B to die, the surviving spouse, in this case Taxpayer B, may amend, revoke, or terminate Subtrust U. However, she may not terminate, revoke, or amend Subtrust V.

It is proposed that Taxpayer B, as the trustee of Trust T, shall fund Subtrust U with the amount of Taxpayer A's interest in Plan X sufficient to comply with the language of Article III(B) of Trust T. Subsequently, Taxpayer B, as the surviving spouse of Taxpayer A, will exercise her right of withdrawal found in Article IV(B) of Trust T to withdraw the Plan X amounts allocated to Subtrust U. Finally, Taxpayer B will roll over said Plan X amounts into an individual retirement arrangement (IRA) set up and maintained in the name of Taxpayer B. Said rollover will occur no later than the 60th day following the date on which said Plan X amounts are distributed to Subtrust U.

The remaining Plan X amounts, if any, will be allocated to Subtrust V and distributed in accordance with the relevant language of Trust T.

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

(1) That, pursuant to Code section 402(c)(9), Taxpayer B will be permitted to defer payment of income tax on amounts distributed from Taxpayer A's interest in Plan X which are allocated to Subtrust U, subsequently paid to Taxpayer B, and finally rolled over into an IRA set up and maintained in the name of Taxpayer B as long as the rollover occurs within 60 days of the date on which said amounts are distributed to Taxpayer B, the trustee of Trust T and of Subtrust U; and

(2) to the extent, if any, that Taxpayer A's interest in Plan X is used to fund Subtrust V, distributions of said interest may be made over Taxpayer B's life expectancy as long as said distributions commence no later than December 31, 2001.

With respect to your first ruling request, section 402(c)(1) of the Code provides, generally, that if any portion of an eligible rollover distribution from a section 401(a) of the Code qualified retirement plan is transferred into an eligible retirement plan, the portion of the distribution so transferred shall not be includible in gross income in the taxable year in which paid.

Section 402(c)(2) of the Code provides that the maximum amount of an eligible rollover distribution to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)).

Section 402(c)(4) of the Code defines "eligible rollover distribution" as any distribution to an employee of all or any portion of the balance to the credit of an 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.

Code section 402(c)(9) provides, in summary, that the provisions of Code section 402(c) shall apply to any distribution made to the surviving spouse of an employee after the employee's death in the same manner as if the spouse were the employee except that only individual retirement arrangements or individual retirement annuities shall be treated as "eligible retirement plans" with respect to said distributions.

Section 1.402(c)-2 of the Income Tax Regulations, Question and Answer-12, provides, that, generally, if any distribution attributable to an employee is paid to the employee's surviving spouse, section 402(c) applies to the distribution in the same manner as if the spouse were the employee. Q&A-12 further provides that only an individual retirement plan is treated as an eligible retirement plan with respect to an eligible rollover distribution to a surviving spouse.

With further respect to your first ruling request, generally, if a deceased's plan interest is payable to a trust, and is paid to the trustee of the trust who then pays it to the decedent's surviving spouse as beneficiary of a subtrust of the trust, said surviving spouse shall be treated as having received the plan proceeds from the trust and not from the decedent. Accordingly, such surviving spouse, generally, will not be eligible to roll over (or have transferred) said distributed plan proceeds into her own IRA.

However, the general rule will not apply in a case where the surviving spouse is the sole trustee of the decedent's trust who pays the plan proceeds to herself after she demands payment thereof in accordance with trust language, which surviving spouse then receives the plan proceeds and transfers them into an IRA set up and maintained in her name.

In this case, Taxpayer B is the sole trustee of Trust T, a trust of which Taxpayer A was the grantor. Taxpayer B, as sole trustee, will allocate at least a portion of Taxpayer A's interest in Plan X to Subtrust U which allocation will be in accordance with the terms of Trust T. Pursuant

to the terms of Trust T, Taxpayer B will demand payment of the Plan X amounts allocated to Subtrust U. Taxpayer B will then roll over the IRA X amounts which will be paid to her pursuant to her demand into an IRA set up and maintained in the name of Taxpayer B. Said roll over will occur within 60 days of the date on which the Plan X amounts will be distributed from Plan X to Trust T. Under this set of facts, the Service will not apply the general rule set forth above.

Thus, with respect to your first ruling request, the Service concludes as follows:

1. That Taxpayer B will be permitted to defer payment of income tax on amounts distributed from Taxpayer A's interest in Plan X which are allocated to Subtrust U, subsequently paid to Taxpayer B, and finally rolled over into an IRA set up and maintained in the name of Taxpayer B as long as the rollover occurs within 60 days of the date on which said amounts are distributed to Taxpayer B, the trustee of Trust T and of Subtrust U.

With respect to your second ruling request, in general, Code section 401(a)(9)(A)(ii) provides, in general, that distributions from a retirement plan qualified within the meaning of Code section 401(a) must be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life (or life expectancy) of the plan participant, or over the lives of the participant and a designated beneficiary (or over a period not extending beyond the life expectancy of the plan participant and a designated beneficiary).

Code section 401(a)(9)(C)(i) provides, with respect to qualified plans, that distributions must commence no later than April 1 of the calendar year following the later of (I) the calendar year in which the employee attains age 70 ½ or (II) the calendar year in which the employee retires.

Code section 401(a)(9)(B)(ii) provides, in short, that where an employee dies prior to distribution of the employee's interest having begun in accordance with subparagraph (A)(ii), the distribution of the employee's entire interest must be made within 5 years after the death of the employee.

Code section 401(a)(9)(B)(iii) provides, in short, for an exception to the 5-year rule of subparagraph (B)(ii). Section 401(a)(9)(B)(iii) provides that if the employee's interest is to be paid to the designated beneficiary of the employee, and if said interest begins no later than 1 year after the date of death of the employee, then required distributions may be paid over the life (or over a period not exceeding the life expectancy) of the designated beneficiary.

Section 1.401(a)(9)-1 of the Proposed Income Tax Regulations, Question and Answer C-3, provides, in short, that to satisfy the rule in Code section 401(a)(9)(B)(iii), distributions must commence no later than December 31 of the calendar year immediately following the calendar year in which the employee died. Q&A-3 further provides, in relevant part, that the rule in Q&A-3 applies even if the employee's surviving spouse is a "designated beneficiary" of the employee's plan interest if another individual is also designated as a beneficiary thereof.

Section 1.401(a)(9)-1 of the Proposed Income Tax Regulations, Question and Answer-D-2, provides, in general, that a designated beneficiary is an individual designated as a beneficiary under the plan, or if the plan so provides, by an affirmative election by the employee specifying the beneficiary. A designated beneficiary is an individual entitled to receive a portion of the employee's benefit contingent on the employee's death or other specified event.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A D-4, provides, in general, that except as provided in paragraph (b), for purposes of calculating the distribution period described in section 401(a)(9)(B)(iii), the employee's designated beneficiary will be determined based on the beneficiaries designated as of the employee's death.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A E-5, provides, in general, that if an employee has designated more than one individual as the beneficiary of his plan interest, the designated beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the Code section 401(a)(9) distribution period.

Section 1.401(a)(9)-1 of the Proposed Income Tax Regulations, Question and Answer D2A provided, in short, that only individuals may be designated beneficiaries for purposes of Code section 401(a)(9). A person who is not an individual, such as the employee's estate, may not be a designated beneficiary. However, Q&A D-5 of section 1.401(a)(9)-1 provided that beneficiaries of a trust with respect to the trust's interest in an employee's benefit may be treated as designated beneficiaries if the following requirements are met:

(1) The trust is valid under state law or would be but for the fact that there is no corpus.

(2) The trust is irrevocable or the trust contains language to the effect it becomes irrevocable upon the death of the employee.

(3) The beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's benefit are identifiable from the trust instrument.

(4) The documentation described in D-7 of this section has been provided to the plan administrator.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A D-6, provided that in the case in which a trust is named as the beneficiary of an employee, all beneficiaries of the trust with respect to the trust's interest in the employee's benefit are treated as designated beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)(B)(iii) and (iv) if the requirements in paragraph (a) of D-5 (above) are satisfied as of the date of the employee's death, or, in the case of the documentation described in D-7 of this section, by the end of the ninth month beginning after the employee's death.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A D-7 provides, in general, that the plan administrator be provided with either a list of all trust beneficiaries as of the date of death or with a copy of the trust document for the trust which is named as beneficiary of the plan as of the employee's date of death. In general, with respect to required distributions which commence after

death, the necessary documentation must be furnished no later than the end of the ninth month beginning after the death of the employee (IRA holder).

In this case, the documentation which accompanied this ruling request and representations made by your authorized representative indicate that, with respect to Trust T, and the Subtrusts created thereunder, there has been compliance with the requirements of section 1.401(a)(9)-1 of the proposed regulations, Qs&As D-5 through D-7. Thus, the beneficiaries of Trust T and Subtrusts V and X may be treated as potential designated beneficiaries with the life expectancy of the eldest thereof being used for purposes of determining the distribution period with respect to any qualified plan of which it, Trust T, is the beneficiary thereof.

In this case, a portion of Taxpayer A's Plan X interest may be allocated to Subtrust V. As noted above, Taxpayer A died prior to his required beginning date. Furthermore, as noted above, of the potential beneficiaries of Subtrust V, all of whom are human beings, Taxpayer B is the eldest.

Thus, with respect to your second ruling request, the Service concludes as follows:

2. to the extent, if any, that Taxpayer A's interest in Plan X is used to fund Subtrust V, distributions of said interest may be made over Taxpayer B's life expectancy as long as said distributions commence no later than December 31, 2001.

This ruling letter assumes that Plan X was or is qualified within the meaning of Code section 401(a) at all times relevant thereto and its trust exempt from tax pursuant to Code section 501(a) at all times relevant thereto. It also assumes that the IRA which will be set up and maintained in the name of Taxpayer B for the benefit of Taxpayer B will meet the requirements of Code section 408.

Please note that this ruling letter does not address the issues, if any, which arise under the "New" Proposed Regulations under Code sections 401(a)(9) and 408(a)(6) which were published in the March 12, 2001 Internal Revenue Bulletin at 2001-1 I.R.B. 865.

This ruling is directed solely to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

Pursuant to a power of attorney on file in this office, the original of this letter ruling 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