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

200209062

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEC - 5 2001

T:EP:RA:T3

UIC: 401.06-02

LEGEND:

Taxpayer A:

Taxpayer B:

Date 1:

Date 2:

Date 3:

Date 4:

Company M:

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 , , 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, whose date of birth was Date 1, 1920, died on Date 2, 2000, having attained 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 and Plan Y. Plans X and Y are sponsored by Company M. Additionally, during his lifetime, Taxpayer A was receiving distributions from Plans X and Y on the basis of his recalculated single life expectancy.

Section 9.02(a)(ii) of Plans X and Y provides, in relevant part, that, after distribution of a plan participant's account balance has commenced to the participant during his lifetime, if the participant dies before all installments have been paid, the remaining installments shall be paid to his or her beneficiary.

Section 9.02(b) of Plans X and Y provides, in relevant part, that a plan participant may elect to have the amount of minimum required distributions be determined based on the joint life expectancy of the participant and his or her beneficiary.

Neither Plan X nor Plan Y has been amended to add either the Model Amendment found in Announcement 2001-18, 2001-10 I.R.B. 791 (March 5, 2001) or the Model Amendment found in Announcement 2001-82, 2001-32 I.R.B. 123 (August 6, 2001).

On Date 4, 1986, which was prior to his "required beginning date", Taxpayer A named his son, Taxpayer B, as the beneficiary of his interests in Plans X and Y. Taxpayer B's date of birth was Date 3, 1944. Taxpayer A did not change the beneficiary of his interests in Plans X and Y prior to his death.

Taxpayer B proposes to receive a Code section 401(a)(9) minimum required distribution with respect to calendar year 2001 no later than December 31, 2001, based on his remaining life expectancy.

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

> That Taxpayer B may receive a Code section 401(a)(9) minimum required distribution with respect to calendar year 2001 no later than December 31, 2001 based on his remaining single life expectancy although Taxpayer A received distributions during his lifetime based on his single, recalculated, life expectancy.

With respect to your ruling request, Code section 401(a)(9)(A) provides, in general, that a trust will not be considered qualified unless the plan provides that the entire interest of each employee-

> (i) will be distributed to such employee not later than the required beginning date, or
>
> (ii) will be distributed, beginning not later than the required beginning date, over the life of such employee or over the lives of such employee and a designated beneficiary or over a period not extending beyond the life expectancy of such employee and a designated beneficiary.

Section 401(a)(9)(C) of the Code provides, in relevant part, that, for purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the calendar year in which the employee attains age 70 ½.

Code section 401(a)(9)(B)(I) provides that, where distributions have begun over life expectancy (cies) in accordance with subparagraph (A)(ii), a trust shall not constitute a qualified trust under this section unless the plan provides that, if the employee dies before his entire interest has been distributed to him, the remaining portion of such interest will be distributed at least as rapidly as under the method of distribution being used under subparagraph (A)(ii) as of the date of death.

Section 401(a)(9)-1 of the Proposed Income Tax Regulations, Question and Answer D-3, provides that for purposes of calculating the distribution period for distributions that begin prior to death, the designated beneficiary will be determined as of the plan participant's required beginning date.

Section 401(a)(9)-1 of the proposed regulations, Q&A F-1(a), provides that where an employee's benefit is in the form of an individual account and is to be distributed over a period not extending beyond the life expectancy of the employee or the joint life and last survivor expectancy of the employee and his designated beneficiary, the amount required to be distributed for each calendar year, beginning with the first calendar year for which distributions are required and for each succeeding calendar year, must be at least equal to the quotient obtained by dividing the employee's benefit by the applicable life expectancy.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A F-1(d), provides that the term "applicable life expectancy" means the life expectancy (or the joint and last survivor expectancy) determined in accordance with E-1 through E-5 of the proposed regulations, reduced by one for each calendar year which has elapsed since the date on which the life expectancy (or joint and last survivor expectancy) was calculated. However, pursuant to E-6 through E-8, life expectancy is recalculated, the applicable life expectancy will be the life expectancy so recalculated.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A E-6, provides, in general, that the life expectancy of a designated beneficiary may be recalculated if the designated beneficiary is the plan participant's spouse.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A F-3A, provides, generally, that, with respect to individual account plans from which distributions have commenced prior to the employee's death, post death distributions will comply with the "at least as rapidly as under the method of distribution being used under section 401(a)(9)(A)(ii) rule" if said distributions are made in accordance with Q&A F-1.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A E-8 provides, in pertinent part, that the life expectancy of a non-spouse beneficiary may not be recalculated. Q&A

E-8 also provides, in pertinent part, that if the life expectancy of either a plan participant or his beneficiary is being recalculated, the recalculated life expectancy is reduced to "0" at the end of the calendar year following the calendar year of the plan participant's or beneficiary's death.

In this case, Taxpayer A, prior to his Code section 401(a)(9) required beginning date, named his son, Taxpayer B as the beneficiary of his interest in Plans X and Y. As noted above, Taxpayer A did not change his beneficiary designations prior to his death.

With respect to your ruling request, the issue presented is whether post death distributions from Taxpayer A's accounts in Plans X and Y may be made over Taxpayer B's life expectancy although distributions from said Plan accounts during Taxpayer A's life were made over Taxpayer A's recalculated single life expectancy (and not over Taxpayer A's and Taxpayer B's joint life expectancy) without violating the "at least as rapidly" rule of Code section 401(a)(9)(B)(i) as described in section 1.401(a)(9)-1 of the proposed regulations, Q&A F-3A.

In this case, as noted above, Taxpayer A timely designated Taxpayer B as his beneficiary for purposes of Code section 401(a)(9). Thus, Taxpayer A could have received distributions from his interests in Plans X and Y over his and Taxpayer B's joint life expectancy subject to the minimum distribution incidental benefit requirement. Such distributions would have complied with the minimum required distribution rules. Instead, Taxpayer A chose to receive distributions over his recalculated single life expectancy. In effect, Taxpayer A received distributions in amounts greater than the required minimums, or, in other words, chose to accelerate receipt of lifetime distributions.

Taxpayer A's election to accelerate distributions does not affect the determination, above, that Taxpayer A's timely designating Taxpayer B as his beneficiary resulted in Code section 401(a)(9) required distributions being those computed using Taxpayer A's and Taxpayer B's joint and survivor life expectancy. Thus, although Taxpayer B's life expectancy was not used in computing lifetime distributions to Taxpayer A, it may be used to determine post-death required distributions to Taxpayer A's beneficiary. Consequently, the "at least as rapidly rule" will not be violated if post-death distributions are calculated using the life expectancy of Taxpayer A's designated beneficiary, Taxpayer B, since Taxpayer A could have used Taxpayer B's life expectancy to determine the amount of his required lifetime distributions.

In this case, as noted above, Taxpayer A's life expectancy was being recalculated. Thus, as of the end of 2001, the calendar year following the calendar year of his death, Taxpayer A's life expectancy will be reduced to "0". Therefore, required distributions to

Taxpayer B for calendar year 2001 will be those computed using the life expectancy of Taxpayer B, Taxpayer A's designated beneficiary.

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

That Taxpayer B may receive a Code section 401(a)(9) minimum required distribution with respect to calendar year 2001 no later than December 31, 2001 based on his remaining single life expectancy although Taxpayer A received distributions during his lifetime based on his single, recalculated, life expectancy.

This letter ruling, by its terms, applies solely to required distributions to Taxpayer B with respect to calendar year 2001. As such, it does not address any issues that may arise with respect to calendar years beginning with calendar year 2002 under the "New" Proposed Regulations published in the Internal Revenue Bulletin at 2001-11 I.R.B. 865 (March 12, 2001).

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

This ruling letter was prepared by of this Group ( ) who may be reached at

Pursuant to a power of attorney on file in this office, a copy of this letter ruling is being sent to your authorized representative.

Sincerely yours,

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

Enclosures:

Deleted copy of letter ruling
Form 437