Uniform Issue List: 402.08-05, 4974.00-00

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200222033

MAR - 4 2002

Legend:

Individual A =

Individual B =

Plan X-1 =

Plan X-2 =

IRA Y =

Dear ***. ********:

This is in response to a request for letter rulings submitted on May 24, 2000, as supplemented on December 12, 2001, January 3, 2002, February 25, 2002, and prior correspondence dated December 31, 1996, concerning a direct rollover of funds from a qualified plan into a individual retirement account described in section 408(a) of the Internal Revenue Code ("Code").

The facts and representations on which the request is based are as follows:

174

*** ***** * ********

Individual A was born on , and he died at age 58 on Individual A would have attained age 70 1/2 on September 29, 1997. Individual B, his surviving spouse, was born on , and she will become age 70 1/2 on

Individual A established a corporation, which adopted a defined benefit pension plan. As of September 1, 1983, the defined benefit pension plan was terminated and the assets were transferred to Plan X-1.

Plan X-1 was amended and restated effective September 1, 1989, by the adoption of a regional prototype non-standardized profit-sharing plan ("Plan X-2"). Section 6.2(d) of Plan X-2 provides, in part, that unless otherwise elected, the beneficiary of the pre-retirement survivor annuity shall be the participant's spouse. Section 6.6(h) of Plan X-2 provides, in part, that notwithstanding any provision in the plan to the contrary, distribution upon the death of a participant shall be made in accordance with the following requirements and shall otherwise comply with Code section 401(a)(9) and the Regulations thereunder. Section 6.6(h)(2)(iii) provides, in part, that in the event the participant's spouse (determined as of the date of the participant's death) is his designated beneficiary, distributions must commence on or before December 31st of the calendar year in which the participant would have attained age 70 1/2. The adoption agreement relating to Plan X-2 provides that distribution upon death shall be made pursuant to the election of the participant or beneficiary, and that the form of distributions may be made in lump sums.

An amendment to Plan X-2, which was executed June 10, 1993, describes optional direct rollovers of eligible rollover distributions, as required by section 401(a)(31) of the Code.

On December 22, 1997, Individual B, the beneficiary of Individual A's interest in Plan X-2, transferred (in a direct rollover) the entire balance in Plan X-2 to a traditional individual retirement account, IRA Y, set up and maintained in the name of Individual B. On December 31, 1998, Individual B converted $******** from her traditional IRA Y to four separate Roth IRA accounts, with $******* being transferred to each account. Except for the rollover, these rulings concern the amounts still remaining in IRA Y.

Individual B has four children. Individual B has signed a designation of beneficiary and election as to the form of benefits under Code section 401(a)(9), with respect to her traditional IRA Y. Individual B's designated beneficiary form names her four living children. The election form states, in effect, as follows: I was born on , and my required beginning date will be April 1, 2003, because I will be 70 1/2 in the immediately preceding calendar year. In the first calendar year that I attain age 70 1/2, I elect that distributions shall commence to me over the joint life expectancy of

175

*** ***** * ********

myself and my designated beneficiary. If permitted by the IRA, I elect that my life expectancy shall not be recalculated for purposes of complying with the minimum distribution rules. The beneficiary designation form also provides that if Individual B has more than one designated beneficiary as of her required beginning date, her IRA is to be subdivided into separate accounts as of said date. Furthermore, from that time forward, each such account must bear its own pro rata of gains and losses and shall otherwise be separately accounted for.

By letter dated January 3, 2002, the Taxpayer's authorized representative revised the request for rulings as follows:

1. Although Individual A died during calendar year 1985, Individual B's directly rolling over her Plan X-2 distributions, which occurred on or about December 22, 1997, fulfilled the requirements of Code section 402(c). Furthermore, no part of said distribution constituted a "required distribution," as that term is used in Code section 402(c)(4)(B), with respect to Individual B because of the application of Code section 401(a)(9)(B)(iv)(I).

2. That for purposes of section 408(a)(6) of the Code and the Proposed Income Tax Regulations thereunder, Individual B's required beginning date for taking distributions from her traditional IRA Y will be April 1, 2003.

3. That no excise tax under section 4974 of the Code will be imposed with respect to calendar years prior to 2002 for a failure to make distributions from Individual B's traditional IRA Y.

4. That no excise tax under section 4974 of the Code will be imposed with respect to calendar years 2002 and thereafter so long as amounts actually distributed from Individual B's IRA Y are greater than or equal to the minimum amounts required to be distributed to Individual B under Code section 408(a)(6).

Section 402(c)(1) of the Code describes rules applicable to rollovers from exempt trusts, and provides in part that any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, then distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

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 the 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 retirement plan qualified in section 401(a), and (iv) an annuity plan described in section 403(a).

Section 402(c)(9) of the Code provides, generally, that if a distribution attributable to an employee is paid to the spouse of the employee after the employee's death, section 402(c) will apply to such distribution in the same manner as if the spouse were the employee except that the spouse shall transfer such distribution only to a section 408(a) individual retirement account or a section 408(b) individual retirement annuity.

Section 401(a)(31) of the Code provides that a trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if the distributee of any eligible rollover distribution (i) elects to have such distribution paid directly to an eligible retirement plan, and (ii) specifies the eligible retirement plan to which such distribution is to be paid (in such form and at such time as the plan administrator may prescribe), such distribution shall be made in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified.

Code section 401(a)(9) provides the rules governing required distributions from retirement plans qualified within the meaning of Code section 401(a).

Code section 401(a)(9)(C) provides, in relevant part, that distributions from a qualified plan must begin no later than April 1 of the calendar year following the calendar year in which the plan participant attains age 70 1/2 (or, if later, the calendar year in which the plan participant separates from service if said participant is not a 5 percent owner).

Code section 401(a)(9)(B)(iii) provides that, if a plan participant dies prior to his required beginning date, distributions to his designated beneficiary must begin no later that one year after the plan participant's date of death. Proposed Regulations issued

under the authority of Code section 401(9)(B)(iii) have extended the date until December 31 of the calendar year following the calendar year of death.

Section 401(a)(9)(B)(iv) of the Code provides a special rule for a surviving spouse of a plan participant. If the surviving spouse is the sole designated beneficiary of the plan participant, then distributions to said spouse need not commence until December 31 of the year in which the plan participant would have attained age 70 1/2.

With respect to ruling request number 1, Individual B was the sole designated beneficiary under Plan X-2, and, as such, Individual B, as surviving spouse of Individual A, was eligible to delay the distribution of benefits under section 401(a)(9)(B)(iv) until December 31st of the calendar year in which Individual A would have attained age 70 1/2. Further, Individual B was eligible to transfer such distribution to IRA Y under section 402(c)(9) of the Code and the direct transfer provisions of section 401(a)(31).

Accordingly, we conclude that Individual B was eligible to make a direct a rollover of Individual A's benefits under Plan X-2 to IRA Y on 1997, prior to the date the distributions would have had to commence to Individual A from Plan X under the exception in Code section 401(a)(9)(B)(iv) of the Code for the special rule for Individual B as surviving spouse of Individual A.

Section 408(a)(6) of the Code provides that under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

Individual B was born on and she will become age 70 1/2 on December 24, 2002. Accordingly, with respect to ruling request 2, we conclude that for purposes of section 408(a)(6) of the Code and the Proposed Income Tax Regulations thereunder, Individual B's required beginning date for taking distributions from her traditional IRA Y will be April 1, 2003.

With respect to ruling request number 3 and number 4, section 4974 of the Code provides, in part, that if the amount distributed during the taxable year of the payee under any qualified retirement plan, including an IRA, as defined in Code section 408, is less than the minimum required distribution for such taxable year, there is hereby imposed a tax equal to 50 percent of the amount by which such minimum distribution exceeds the actual amount distributed during the taxable year.

Since Individual B, as surviving spouse made a direct rollover to her own IRA, she will not be required to take a distribution from IRA Y until her "required beginning date," as defined in section 401(a)(9)(C) of the Code, which is April 1 of the year

. ** *. ********

following the year in which she attains age 70 1/2. Since there are no distributions required under section 408(a)(6) before Individual B's required beginning date, April 1, 2003, there will be no excise tax imposed under section 4974 of the Code as long as the calendar year 2002 required distribution is made prior to that date.

Accordingly, we conclude that no excise tax under section 4974 of the Code will be imposed with respect to calendar years prior to 2002 for a failure to make distributions from Individual B's traditional IRA Y.

Individual B's required beginning date will be April 1 following the year in which she attains age 70 1/2. Her designated beneficiaries are her children. The minimum distribution required must be equal to the quotient obtained by dividing the valuation as of the close of the preceding year by the applicable life expectancy. The first distribution must be made before the required beginning date, and the minimum distribution for all other calendar years, including the minimum distribution for the distribution calendar year which includes the required distribution date must be made on or before December 31, of that distribution calendar year.

Accordingly, no excise tax will be imposed with respect to calendar year 2002 and thereafter under section 4974 of the Code so long as amounts actually distributed from Individual B's IRA Y are greater than or equal to the minimum amounts required to be distributed to Individual B under Code section 401(a)(9) which is applicable to Individual B's IRA Y because of Code section 408(a)(6).

These rulings are based on the assumption that Plan X-2 was qualified under section 401(a) of the Code on December 22, 1997, when Individual B made a direct rollover of Individual A's benefits to IRA Y. These rulings are also based on the assumption that IRA Y established by Individual B meets and will meet the requirements of section 408 of the Code at all times relevant to the transactions described herein. Additionally, it is based upon the assumption that the transaction described met all the applicable requirements of section 402(c) of the Code.

These rulings do not address any issues that may arise under the proposed regulations published at 2001-11 I.R.B. 865 (March 12, 2001), concerning required distributions from retirement plans.

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

The original and a deleted copy of this letter have been sent to your authorized representative in accordance with a power of attorney on file in this office.

. ** *. ********

If you have any questions please contact me or ********** # ********, at (***) ***-****.

Sincerely yours,

/s/ Alan Pipkin

Al Pipkin, Manager
Employee Plans Technical Group 4
Tax Exempt & Government Entities Division

Enclosures:
Deleted copy of this letter
Notice of Intention to Disclose, Notice 437

180