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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

T:EP:RA:T3

AUG - 7 2002

UICs: 403.01-00
401.06-02

LEGEND:

Taxpayer A:

Individual B:

Taxpayer C:

Taxpayer D:

Taxpayer E:

Taxpayer F:

Individual G:

Plan X:

Trust W:

Subtrust X:

Subtrust Y:

Subtrust Z:

Subtrust A:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Date 8:

Date 9:

Date 10:

State F:

Sum 1:

Dear :

This is in response to the , correspondence submitted by your authorized representative, as supplemented by correspondence dated , , , , and (2 letters), in which you request a series of letter rulings under sections 401(a)(9) and 402 of the Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 1, 1934, died on Date 2, 2000 without having attained age 70 ½. At his death, Taxpayer A was a participant in Plan X, a profit-sharing plan which your authorized representative asserts was qualified within the meaning of Code section 401(a).

The provisions of Plan X indicate, in relevant part, that distributions to the beneficiary of a plan participant may be made by the purchase of an annuity as long as payments under any purchased annuity are not made over a period extending beyond any period permissible under Code section 401(a)(9).

On Date 7, 2001, Individual B, the executor of the estate of Taxpayer A, amended Plan X by adopting a Model Amendment thereto pursuant to which Code section 401(a)(9) required distributions from Plan X would be made in accordance with the

revised Proposed Income Tax Regulations adopted under Code section 401(a)(9) which were published in the Internal Revenue Bulletin at 2001-11 I.R.B. 865 (March 12, 2001).

On Date 8, 1994, Taxpayer A named Trust W as the beneficiary of his interest in Plan X. On or about Date 9, 2001, a copy of Trust W was served on Individual G, the administrator of Plan X. Date 9, 2001 is within nine months of Date 2, 2000 (Taxpayer A's date of death). Your authorized representative has asserted, on your behalf, that Trust W is valid under the laws of State F which was the state of Taxpayer A's domicile at his death.

Taxpayer A was survived by his wife, Taxpayer C, whose date of birth was Date 3, 1945. Taxpayer C died on Date 4, 2000 without having attained age 70 ½. Date 4, 2000 occurred after Date 2, 2000 (Taxpayer A's date of death), and also occurred prior to September 30, 2000,. Taxpayer A was also survived by his son, Taxpayer D, whose date of birth was Date 10, 1961.

Article 3.4 of Trust W provides, in relevant part, that Trust W became irrevocable upon the death of Taxpayer A.

Article 4.6B of Trust W provides that in the event Taxpayer A is the first of the grantors to die (as was the case), a portion of his interest in Plan X in the amount of Sum 1 was to be allocated to Subtrust X created under Article 4.6B(3). The amount allocated to Subtrust X was then allocated to Subtrust Y pursuant to Article 7.3 of Trust W. Article 7.3 of Trust W provides, in part, that Subtrust Y assets shall be held in trust for the benefit of Taxpayer D and the descendents of Taxpayer D then living.

Taxpayer D has two children, Taxpayer E whose date of birth was Date 5, 1994, and Taxpayer F whose date of birth was Date 6, 1997.

The balance of Taxpayer A's interest in Plan X was payable to Subtrust Z created under the Article 4.6B(2) of Trust W for the benefit of Taxpayer C. Upon the death of Taxpayer C, her interest in Subtrust Z was allocated, in part, to Subtrust Y described above and, in part, to Subtrust A created under Article 7.4 of Trust W for the benefit of Taxpayer D. Pursuant to Article 7.4B of Trust W, when Taxpayer D attains age 60, the trustee of Trust W is to pay Taxpayer D as much of the principal of said subtrust as he shall request in writing.

Section 21.090 of the State F Statutes, in relevant part, exempts up to $500,000 held in a trust forming part of a stock bonus, pension or profit-sharing plan which is a qualified plan pursuant to section 401 from claims of creditors. Thus, your authorized representative asserts, no portion of Taxpayer A's interest in Plan X has been used to pay either Taxpayer A's creditors or expenses associated with Taxpayer A's estate.

The trustee of Plan X intends to purchase one individual nontransferable variable annuity contract that your authorized representative asserts will satisfy the requirements of section 401(g) of the Internal Revenue Code with all or a portion, of the "liquid" assets held in Taxpayer A's account under Plan X.

Your authorized representative has asserted, on your behalf, that the term "nontransferable variable annuity contract" means a contract issued by an insurance company that promises to make distributions based upon the investment performance of the underlying segregated asset accounts in which the annuity funds are invested. The segregated asset accounts are, generally, mutual funds that are controlled by the insurance company issuing the annuity contract and that are valued at their net asset value on a daily basis. The calculation of a Code section 401(a)(9) minimum required distribution with respect to a calendar year from such a contract is determined with reference to the net asset value of the various segregated asset accounts in which the annuity funds are invested as of December 31 of the previous calendar year. An owner of a variable annuity contract has unlimited discretion to transfer annuity funds between and among the various segregated asset accounts.

The annuity contract will be issued with Plan X listed as the owner thereof; as a result, the annuity contract will be originally owned by the trustee of Plan X. Said annuity contract will then be distributed by the Plan X trustee to Trust W. Said annuity contract will provide for installment distributions over a period certain that will not exceed the life expectancy of Taxpayer C beginning not later than the end of calendar year 2002.

The annuity contract will provide that if the annuitant were to die prior to receiving all of the distributions due under the contract, installment distributions may continue to be made to the individual or entity properly named to receive subsequent annuity distributions. However, said individual or entity will receive annuity distributions over a period certain not extending beyond the remaining, unexpired, unrecalculated life expectancy of Taxpayer C.

The variable annuity contract, referenced above, will contain an endorsement that will provide that once the annuity contract has been distributed from Plan X to the beneficiary, no portion of the owner's interest in the contract may be transferred or assigned. Furthermore, the annuity contract will provide that it may not be sold, discounted or pledged as collateral for a loan or be security for the performance of an obligation.

Taxpayer A's account under Plan X contains certain non-liquid assets including, but not limited to, certain mortgage notes. Your authorized representative has asserted,

on your behalf, that the non-liquid assets will not be used to purchase the annuity contract referenced above. The distribution of said non-liquid assets to the beneficiary or beneficiaries of Taxpayer A's interest in Plan X began during calendar year 2001. It is anticipated that said distribution will be completed no later than December 31, 2002.

Your authorized representative has asserted, on your behalf, that sufficient liquid and non-liquid assets were distributed from the trust of Plan X during calendar year 2001 to satisfy the requirements of Code § 401(a)(9). In this regard, the calendar year 2001 required distribution was computed based on the life expectancy of Taxpayer C.

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

1. That the purchase by the trustee of the trust associated with Plan X of one individual nontransferable variable annuity contract issued with the trustee as owner and with distributions therefrom being based on the life expectancy of Taxpayer C as the oldest beneficiary of Trust W, pursuant to sections 7.3 and 7.4 of Trust W, with all or a portion of the "liquid" assets held in Taxpayer A's account under Plan X will not result in a taxable distribution to either Trust W and/or Taxpayer D;

2. that the distribution of the individual nontransferable variable annuity contract referenced in the first letter ruling request from the qualified trust associated with Plan X to Trust W and/or the subtrusts established pursuant to sections 7.3 and 7.4 of Trust W shall not result in a taxable distribution to Trust W;

3. that Taxpayer C, the oldest beneficiary of Trust W, is the designated beneficiary of Taxpayer A's interest under Plan X;

4. that the fact that Taxpayer A's interest under Plan X was payable to Trust W does not alter the Service's responses to the first three (3) ruling requests (above);

5. that, with respect to calendar years beginning with calendar year 2002, Code section 401(a)(9) required distributions from Taxpayer A's interest under Plan X may be made by means of distributions from the individual nontransferable variable annuity, referenced above, to Trust W or the subtrusts created under sections 7.3 and 7.4 of Trust W (as the case may be) over the non-recalculated life expectancy of Taxpayer C commencing no later than December 31, 2002; and

6. that Code section 401(a)(9) required distributions for calendar years 2001 and 2002 from Taxpayer A's account under Plan X either may have been or may be satisfied, in whole or in part, from the distribution from said account of the non-liquid assets, described above, to the beneficiary of Taxpayer A's Plan X interest.

With respect to your ruling requests, § 401(a) of the Internal Revenue Code provides certain requirements applicable to qualified retirement plans. Code section 402 provides the rules governing the taxation of distributions received from the tax-qualified trust associated with a plan qualified within the meaning of Code section 401(a).

Code section 402(a)(1) provides, in general, that amounts distributed from the trust associated with a Code section 401(a) qualified plan which trust is exempt from tax pursuant to Code section 501(a) shall be taxed to the distributee, in the taxable year of the distributee in which distributed, in accordance with the rules of Code section 72.

§ 1.402(a)-1(a)(2) of the Income Tax Regulations provides, in relevant part, that if the trust associated with a Code section 401(a) qualified plan distributes a transferable annuity contract to an employee, the entire cash surrender value of the annuity contract is includible in the gross income of the employee unless the contract is made non-transferable within 60 days of distribution.

Code section 401(g) provides, in relevant part, that, for purposes of Code section 402, the term "annuity" does not include any contract or certificate issued after December 31, 1962, which is transferable, if any person other than the trustee of a trust described in Code section 401(a) which is exempt from tax under Code section 501(a) is the owner of such contract or certificate.

Code section 401(a)(9), in general, sets down the rules governing minimum required distributions from retirement plans qualified within the meaning of Code section 401(a). Code section 401(a)(9)(C)(i) provides, in short, that distributions to a qualified plan participant must begin 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. Subclause (II) of clause (i) does not apply to a "5-percent owner" as that term is defined in Code section 416.

Code section 401(a)(9)(B)(ii) provides that, with respect to an employee/ plan participant who dies prior to his "required beginning date", as that term is defined in Code section 401(a)(9)(C), distributions of that employee's entire interest under a plan must be made within 5 years of the employee's death.

Code section 401(a)(9)(B)(iii) provides an exception to the 5-year rule (above) with respect to distributions made to (or for the benefit of) a designated beneficiary as long as said distributions begin not later than 1 year after the death of the employee and as long as said distributions are made over the life of the beneficiary (or over a period not extending beyond the life expectancy of such beneficiary).

Revised Proposed Income Tax Regulations, were published in the Internal Revenue Bulletin at 2001-11 I.R.B. 865 (March 12, 2001) ("Revised Proposed" Regulations). The Preamble to the "Revised Proposed" Regulations provides, in relevant part, that the "Revised Proposed" Regulations were proposed to be effective for distributions for calendar years beginning on or after January 1, 2002. For distributions for the 2001 calendar year, plan sponsors may follow the "Revised Proposed" Regulations.

"Final" and Temporary Income Tax Regulations under sections 401(a)(9) and 408(a)(6) were published in the Federal Register at 67 Federal Register 18987-19028 (April 17, 2002) ("Final" Regulations) (Also see 2002-19 I.R.B. 852, May 13, 2002). The Preamble to the "Final" Regulations provides, in relevant part, that the regulations apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2003. With respect to calendar year 2002, a taxpayer may rely on the "Final" regulations, the 2001 proposed regulations, or the 1987 proposed regulations.

Although the "Revised Proposed" Regulations were published prior to the "Final" Regulations, in this letter ruling, citations to sections of the "Final" Regulations will come before similar citations to sections of the "Revised Proposed" Regulations.

§ 1.401(a)(9)-3 of the "Final" Regulations, Question and Answer-3, provides, in relevant part, that in order to satisfy the exception in Code section 401(a)(9)(B)(iii) to the 5-year rule of Code section 401(a)(9)(B)(ii), with respect to a non-spouse beneficiary, distributions must begin no later than the end of the calendar year immediately following the calendar year of the employee's death.

§ 1.401(a)(9)-3 of the "Revised Proposed" Regulations, Q&A-3, contains language similar to that found above.

§ 1.401(a)(9)-4 of the "Final" Regulations, Q&A-4(a), provides that an individual must be a beneficiary as of the date of death of a plan participant in order to be treated as a designated beneficiary. Furthermore, in general, a plan participant's designated beneficiary will be determined based on the beneficiaries designated as of the date of death who remain beneficiaries as of September 30 of the calendar year following the calendar year of the employee's death.

§ 1.401(a)(9)-4 of the "Final" Regulations, Q&A-4(c), provides, in general, that for purposes of this A-4, an individual who is a beneficiary as of a plan participant's death but who dies prior to September 30 of the calendar year following the calendar year of the plan participant's death, is still to be treated as the designated beneficiary for purposes of computing minimum required distributions after the employee's (plan participant's) death.

§ 1.401(a)(9)-4 of the "Revised Proposed" Regulations, Q&A-4(a), provides, in general, that an employee's designated beneficiary will be determined based on the beneficiaries designated as of the last day of the calendar year following the calendar year of the employee's death.

The Preamble to the "Final" Regulations provides, in relevant part, that the final regulations clarify that if a designated beneficiary dies during the period between the employee's date of death and September 30 of the year following the year of the employee's death, the individual continues to be treated as the designated beneficiary for purposes of determining the distribution period rather than the successor beneficiary.

§ 1.401(a)(9)-5 of the "Final" Regulations, Q&A-5(b), provides, in general, that if an employee dies prior to his required beginning date having designated a beneficiary, in order to satisfy the requirements of Code section 401(a)(9)(B)(iii), the applicable distribution period for distribution calendar years after the distribution calendar year containing the employee's date of death is the remaining life expectancy of the employee's designated beneficiary determined in accordance with either paragraph (c)(1) or paragraph (c)(2) of this A-5.

§ 1.401(a)(9)-5 of the "Revised Proposed" Regulations, Q&A-5(b), contains language similar to that found above.

§ 1.401(a)(9)-5 of the "Final" Regulations, Q&A-5(c)(1), provides, in general, that, with respect to a non-spouse beneficiary, the applicable distribution period measured by the beneficiary's remaining life expectancy is determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the employee's death. In subsequent calendar years, the applicable distribution period is reduced by one for each calendar year that has elapsed after the calendar year immediately following the calendar year of death.

§ 1.401(a)(9)-5 of the "Revised Proposed" Regulations, Q&A-5(c)(1), contains language similar to that found above.

§ 1.401(a)(9)-5 of the "Final" Regulations, Q&A-5(c)(2), provides, in general, that if the surviving spouse of the employee is the employee's sole beneficiary, for calendar years after the calendar year of the spouse's death, the applicable distribution period is the life expectancy of the spouse using the age of the spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each calendar year that has elapsed after the calendar year of the spouse's death.

§ 1.401(a)(9)-5 of the "Revised Proposed" Regulations, Q&A-5(c)(2), contains language similar to that found above.

§ 1.401(a)(9)-4 of the "Final" Regulations, Q&A-3, provides that only individuals may be designated beneficiaries for purposes of 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-5 of section 1.401(a)(9)-4 provides 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 within the meaning of A-1 of this section from the trust instrument.

(4) The documentation described in A-6 of this section has been provided to the plan administrator.

The "Revised Proposed" Proposed Regulations contain similar language at § 1.401(a)(9)-4, Q&A-5.

§ 1.401(a)(9)-4 of the "Final" Regulations, Q&A-6(b), provides, generally, with respect to required minimum distributions after the death of the employee, that documentation described therein (Q&A-6) must be provided by the trustee of the trust/beneficiary to the plan administrator by October 31 of the calendar year following the calendar year in which the employee died.

The "Revised Proposed" Regulations at §1.401(a)(9)-4, Q&A-6(b), provide, generally, with respect to required minimum distributions after the death of the employee, that documentation described therein (Q&A-6) must be provided by the trustee of the

trust/beneficiary to the plan administrator by the last day of the calendar year following the calendar year in which the employee died.

Section 1.401(a)(9)-6T of the Temporary Income Tax Regulations, published at 67 Federal Register 18987-19028 (April 17, 2002) ("Temporary" Regulations), Q&A-1(a), provides, in relevant part, that in order to satisfy section 401(a)(9), except as provided in this A-1, distributions under a defined benefit plan must be paid in the form of periodic annuity payments for the employee's life (or the joint lives of the employee and beneficiary) or over a period certain that does not exceed the maximum length of the period certain determined in accordance with A-3 of this section. Q&A-1(a) further provides that, except as otherwise provided in A-4(b) of this section, all payments (life and period certain) also must either be nonincreasing or increase only in accordance with one or more of the following:

(1) With an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;

(2) To the extent of the reduction in the amount of the employee's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the period described in section 401(a)(9)(A)(ii) over which payments were being made dies or is no longer the employee's beneficiary pursuant to a qualified domestic relations order within the meaning of section 414(p);

(3) To provide cash refunds of employee contributions upon the employee's death; or

(4) To pay increased benefits that result from a plan amendment.

§ 1.401(a)(9)-6 of the "Temporary" Regulations, Q&A-4(a), provides, in general, that distributions may be made from an annuity contract which is purchased with an employee's benefit by the plan from an insurance company and which makes payments that satisfy the provisions of this section (-6 which provides the rules governing required annuity distributions from defined benefit plans). Q&A-4(a) further provides that if the payments actually made under the annuity contract do not meet the requirements of section 401(a)(9), the plan fails to satisfy section 401(a)(9).

§ 1.401(a)(9)-6 of the "Revised Proposed" Regulations, Q&A-1(c), provides, in relevant part, that distributions under a variable annuity will not be found to be increasing (and, thus, potentially in violation of the required distribution rules) because the amount of the payments varies with the investment performance of the underlying assets.

The Preamble to the "Final" and "Temporary" Regulations provides, in relevant part, that the temporary regulations do not permit annuity payments that vary with the value of the underlying assets of the plan to be provided by a defined benefit plan with a section 401(a) qualified trust. However, the temporary regulations do not preclude such payments being made under an annuity contract purchased from an insurance contract with an employee's benefit under a plan. Thus, annuity contracts that comply with the language of Q&A-1(c) of the "Revised Proposed" Regulations, above, purchased from an insurance company will satisfy the requirements of Code section 401(a)(9) as long as the contract also meets the requirements of section 1.401(a)(9)-6 of the "Temporary" Regulations.

With respect to your ruling requests, Taxpayer A, a participant in Plan X, died on Date 2, 2000. The facts surrounding this ruling request indicate that a portion of Taxpayer A's Plan X account will be distributed by means of a purchase of one nontransferable variable annuity contract which contract will provide for payments to the appropriate beneficiary or beneficiaries. The remaining, non-liquid, assets held in Taxpayer A's account under Plan X's trust will be distributed outright to Taxpayer A's beneficiaries. Said distribution began during the 2001 calendar year, and is expected to end no later than December 31, 2002.

With further reference to your ruling requests, the nontransferable variable annuity contract will provide for installment payments made over a period certain not exceeding the life expectancy of Taxpayer C. Taxpayer C, who was Taxpayer A's wife, is the oldest beneficiary of all the beneficiaries named in either Trust W or one of the subtrusts created under the language of Trust W. The facts presented indicate that Trust W, and its associated subtrusts, are "see-through" trusts for purposes of the "Final" Regulations and the "Revised Proposed" Regulations under Code sections 401(a)(9) and 408(a)(6). Thus, Taxpayer C may be treated as the "designated beneficiary" of Taxpayer A, and installment payments under the annuity contract referenced herein may be paid over Taxpayer C's non-recalculated life expectancy beginning no later than December 31, 2002.

Thus, with respect to your ruling requests, we have reached the following conclusions:

1. That the purchase by the trustee of the trust associated with Plan X of one individual nontransferable variable annuity contract issued with the trustee as owner and with distributions therefrom being made over the life expectancy of Taxpayer C as the oldest beneficiary of Trust W, pursuant to sections 7.3 and 7.4 of Trust W, with all or a portion of the "liquid" assets held in

Taxpayer A's account under Plan X will not result in a taxable distribution to either Trust W and/or Taxpayer D;

2. that the distribution of the individual nontransferable variable annuity contract referenced in the first letter ruling request from the trust associated with Plan X to Trust W and/or the subtrusts established pursuant to sections 7.3 and 7.4 of Trust W shall not result in a taxable distribution to Trust W;

3. that Taxpayer C, the oldest beneficiary of Trust W, is the designated beneficiary of Taxpayer A's interest under Plan X;

4. that the fact that Taxpayer A's interest under Plan X was payable to Trust W does not alter the Service's responses to the first three (3) ruling requests (above);

5. that Code section 401(a)(9) required distributions from Taxpayer A's interest under Plan X may be made by means of distributions from the individual nontransferable variable annuity, referenced above, to Trust W or the subtrusts created under sections 7.3 and 7.4 of Trust W (as the case may be) over the non-recalculated life expectancy of Taxpayer C commencing no later than December 31, 2002; and

6. that Code section 401(a)(9) required distributions for calendar years 2001 and 2002 from Taxpayer A's account under Plan X either may have been or may be satisfied, in whole or in part, from the distribution from said account of the non-liquid assets described above to the beneficiary of Taxpayer A's Plan X interest.

This ruling letter assumes that Plan X is, as represented, qualified within the meaning of Code section 401(a) and will remain so qualified at all times relevant thereto. It also assumes that Trust W and its related subtrusts are valid under the laws of State F as represented.

This letter is directed only to the taxpayer that requested it and is based solely on the representations made with respect thereto. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with the Service, a copy 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 ruling letter
Notice of Intention to Disclose