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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 11 2002

T:EP:RA:T3

UICs: 403.04-00
403.05-00

LEGEND:

Taxpayer A:

Taxpayer B:

Annuity D:

Annuity E:

Company F:

State G:

Date 1:

Date 2:

Date 3:

Amount 1:

Trust X:

Subtrust Y:

Subtrust Z:

Dear [redacted] :

This is in response to the , letter submitted on your behalf by your authorized representative, as supplemented by correspondence received by the Internal Revenue Service on , in which you request a letter ruling under section 403(b)(8) of the Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A, a resident of State G, whose date of birth was Date 1, 1934, died at age 67 on Date 2, 2001, survived by Taxpayer B, his spouse.

At the time of his death, Taxpayer A owned Annuity D and Annuity E, which your authorized representative asserts are described in Code section 403(b), with Company F.

Prior to his death, Taxpayer A executed a beneficiary designation with respect to his interest in Annuities D and E pursuant to which Taxpayer A named Trust X, of which he was sole settlor, as the beneficiary of said Annuities D and E. As of Taxpayer A's date of death, Annuities D and E had an aggregate value of Amount 1.

Trust X was created by means of a trust agreement dated Date 3, 1977. At the death of Taxpayer A, the provisions of Trust X direct the establishment of Subtrusts Y and Z. During her lifetime, Taxpayer B is the sole income beneficiary of Subtrust Y. Furthermore, pursuant to Article VIII, §2 of Trust X, the trustee of Trust X is authorized to distribute to Taxpayer B any amounts from the principal of Subtrust Y as Taxpayer B requests in writing. The right of withdrawal is personal to Taxpayer B.

Article VII, § 2(a), of Trust X provides that the trustee of Trust X shall allocate to Subtrust Y an amount necessary to reduce Taxpayer A's estate tax to zero. Remaining trust assets are to be allocated to Subtrust Z. Article VII, § 2(c) of Trust X provides, in relevant part, that the trustee of Trust X has the discretion to choose which assets shall be allocated to Subtrust Y.

Pursuant to Article XII, section 2 of Trust X, at the death of Taxpayer A, Taxpayer B became the sole trustee of Trust X and the subtrusts created thereunder.

Company F intends to make single sum distributions of all amounts standing under Annuities D and E to Taxpayer B as sole trustee of Trust X. As trustee, Taxpayer B will allocate said annuity distributions to Subtrust Y. Pursuant to Article VIII, § 2, of Trust X, Taxpayer B, as lifetime beneficiary of Subtrust Y, will demand payment of said annuity amounts. After receipt of said amounts, Taxpayer B will roll over the annuity distributions into one or more individual retirement arrangements (IRAs) described in Code § 408(a). Said distributions and rollovers will occur no later than December 31, 2002. Furthermore, Taxpayer B will roll over the distributions she receives no later than the 60th day following the date on which distributions are made from Annuities D and E to Taxpayer B as trustee of Trust X. As a matter of administrative convenience, Taxpayer B, as sole trustee of Trust X and as sole lifetime beneficiary of Subtrust Y with the authority to demand payment of amounts allocated to Subtrust Y, may direct Company F to directly transfer amounts standing in Annuities D and E into her IRA(s).

The amount necessary to satisfy the minimum distribution rules of Code § 401(a)(9), if any, will not be rolled over or transferred into Taxpayer B's IRA(s).

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

That Taxpayer B is eligible to roll over the distribution(s) of Taxpayer A's interests in Annuity D and Annuity E into one or more IRAs set up and maintained in her name pursuant to Code section 403(b) as long as the rollovers occur no later then the 60th day measured from the date(s) said distributions are received by Taxpayer B as the trustee of Taxpayer A's Trust X.

With respect to your 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,

(B) any distribution to the extent the distribution is required under section 401(a)(9), and

(C) any hardship distribution described in § 401(k)(2)(B)(i)(IV).

Section 402(c)(8)(B) 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 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.

Section 1.402(c)-2 of the Income Tax Regulations, Question and Answer 7(b), provides, generally, that any amount that is paid from a qualified plan before January 1 of the year in which the employee attains (or would have attained) age 70 ½ will not be treated as required under section 401(a)(9) and, thus, is an eligible rollover distribution if it otherwise qualifies.

Section 402(c)(9) of the Code provides that if a distribution attributable to an employee is paid to the spouse of the employee after the employee's death, section 402(c) of the Code 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.

In general, with respect to distributions received after December 31, 2001, the Economic Growth and Tax Relief Reconciliation Act of 2001 removed the limitation in Code § 402(c)(9) applicable to a surviving spouse's right to transfer referenced immediately above.

Section 1.402(c)-2 of the Income Tax Regulations, Question and Answer 12, provides, generally, that if a 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. Thus, a distribution to the surviving spouse of an employee is an eligible rollover distribution if it meets the applicable requirements of section 402(c)(2) and (4) and the associated regulations.

Code § 401(a)(31) provides that a plan qualified within the meaning of Code § 401(a) must provide that a plan participant who is entitled to receive an eligible rollover distribution must be permitted to elect to have such eligible rollover distribution be paid directly to an eligible retirement plan including an IRA.

In short, a direct transfer, as that term is used in Code § 401(a)(31), is treated as a distribution followed by a rollover.

Code section 403(b)(8)(A) sets down the general rule applicable to rollovers of amounts received from Code section 403(b) annuities.

Code section 403(b)(8)(B) provides, in summary, that rules similar to rules of paragraphs (2) through (7) of section 402(c) shall apply for purposes of subparagraph (A).

Code section 403(b)(10) provides, in relevant part, that requirements similar to the requirements of Code section 401(a)(9) and 401(a)(31) apply to annuities described in Code section 403(b).

Section 1.403(b)-2 of the regulations, Q&A-1, provides, in summary, that an eligible rollover distribution received from a Code section 403(b) annuity may be rolled over into an IRA. Section 1.403(b)-2 of the regulations, Q&A-1, further provides, in short, that the rules with respect to rollovers in sections 402(c)(1), (c)(3) and (c)(9) also apply to eligible rollover distributions from section 403(b) annuities.

With respect to your ruling request, generally, if a decedent's qualified Code § 403(b) annuity assets pass through a third party, e.g. an estate or a trust, and then are distributed to the decedent's surviving spouse, said spouse will be treated as acquiring them from the third party and not from the

decedent. Thus, generally, said surviving spouse will not be eligible to roll over the qualified annuity proceeds into her own IRA.

In this case, Taxpayer A's Trust X is the beneficiary of Taxpayer A's interest in Annuities D and E, annuities described in Code section 403(b). Taxpayer A's interest in Annuities D and E will be paid to Taxpayer B as the trustee of Taxpayer A's Trust X. As trustee, Taxpayer B will allocate Annuities D and E to Subtrust Y, a subtrust created under the provisions of Trust X. Pursuant to the provisions of Trust X, as sole income beneficiary of Subtrust Y, Taxpayer B will then demand payment of Annuities D and E. Taxpayer B will then either pay the amounts standing in Annuities D and E to Taxpayer B as beneficiary of Subtrust Y, or, in the alternative, directly transfer said amounts to one or more IRAs set up and maintained in the name of Taxpayer B. If Annuities D and E are paid to Taxpayer B, Taxpayer B will then roll over said annuities into one or more IRAs set up and maintained in her name. Said rollovers will occur no later than the 60th day following the date(s) on which said distributions are made from Annuities D and E to Taxpayer B as trustee of Trust X.

As noted above, the Annuity D and Annuity E distributions referenced herein will be the only distributions made from said annuities of any portion of Taxpayer A's interest in the annuities. Furthermore, Taxpayer A had not attained age 70 1/2 at the time of death, and, if alive, would still not have attained age 70 1/2. Thus, said distributions are not ineligible to be treated as "eligible rollover distributions" under Code section 402(c)(4)(A) which applies to distributions of Code section 403(b) annuities pursuant to Code section 403(b)(8).

Thus, based on the facts given above, the Service will not apply the general rule referenced herein and will treat Taxpayer B, Taxpayer A's surviving spouse, as having received Taxpayer A's Annuities D and E, to the extent the amounts standing under said annuities exceed the amounts required to be distributed pursuant to Code § 401(a)(9), if any, from Taxpayer A and not from Taxpayer A's Trust X.

Thus, based on the above, the Service concludes with respect to your ruling request:

> That Taxpayer B is eligible to roll over the distributions of Taxpayer A's interests in Annuity D and Annuity E into one or more IRAs set up and maintained in her name, pursuant to Code section 403(b), as long as the rollover(s) occur no later then the 60th day measured from the date(s) said distributions is (are) received by Taxpayer B as the trustee of Taxpayer A's Trust X. In the alternative, said distributions may be directly transferred into one or more IRAs set up and maintained in the name of Taxpayer B.

This ruling letter is based on the assumption that Annuities D and E either have or will satisfy the requirements of section 403(b) of the Code at all times relevant thereto. In addition, it assumes that the IRA(s) set up by Taxpayer B to receive the amounts transferred from said annuities will meet the requirements of section 408(a) at all times relevant thereto.

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.

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

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