200325008

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

DEC 06 2002

Index No. 408.00-00

T:EP:RA:T1

Legend:

Decedent.....

Individual A.....

Executor.....

Custodian F. .....

Sum B.....

Sum C.....

Date 1..... .....

Date 2.....

Dear :

This is in response to a request for a ruling made by letter dated April 30, 2002, as supplemented by correspondence dated November 11, 2002 , which was submitted on your behalf by your authorized representative. Your request concerns the tax consequences of a proposed rollover from tax sheltered annuities described in section 403(b) of the Internal Revenue Code ("Code") to an individual retirement account ("IRA") following the death of the decedent.

You are the son of the Decedent and Executor of Decedent's estate ("Estate"). Decedent was born on Date 1, and died on Date 2. Decedent was survived by Individual A, the Decedent's spouse. At the time of Decedent's death, Decedent was the owner of three Custodian F 403(b) annuities ("TSAs") valued at Sum B. Decedent designated his Estate as the beneficiary of each TSA. The Decedent had not begun to take distributions from his TSAs at the time of his death and had not yet reached his required beginning date under Code sections 403(b)(10) and 401(a)(9).
Prior to his death, the Decedent executed a Last Will and Testament ("Will") and named Individual A as the sole residuary beneficiary of his Estate. Decedent also established

Trust G which, under the terms of his will, is to be funded by an amount equal to the largest amount that can pass free of federal estate tax by reason of the unified credit allowable to his Estate but no other credit and after taking into account certain taxable gifts, certain other property passing under other provisions of the Will or outside the Will which is included in decedent's gross estate and does not qualify for the marital deduction and charges that are not allowed as a deduction for estate tax purposes.

At the time of Decedent's death, the federal unified credit exemption was equivalent to $675,000, and no previous taxable gifts had been made by the Decedent which would reduce the amount of the credit. Trust G provides for discretionary distributions of income and principal to Individual A and Decedent's issue. You as Executor will fully fund Trust G with the TSAs up to the unified credit exemption (the "Base Amount"), and allocate the remaining amount, Sum C (the "Rollover Amount") to Individual A as residual beneficiary. Individual A will have the Rollover Amount contributed to an IRA set up and maintained in Individual A's name pursuant to a direct rollover.

Based on the above facts and representations, you request the following rulings:

(1) That Individual A be treated as the payee or distributee of the Rollover Amount;

(2) That Individual A, as the surviving spouse and sole residuary beneficiary of the Estate, be treated as receiving the Rollover Amount directly from the Decedent and not from the Estate;

(3) That, pursuant to Code section 403(b)(10), the transfer of the Rollover Amount into an IRA owned and maintained by Individual A, will qualify as a tax deferred rollover transaction;

(4) That Individual A will not be required to include in gross income for federal income tax purposes any portion of the Rollover Amount when distributed from the three TSAs which is paid to an IRA owned and maintained by Individual A.

With respect to the four ruling requests, Code section 403(b)(8)(A) provides that if any potion of the balance to the credit of an employee in a 403(b) annuity contract is paid to him in an eligible rollover distribution and the employee transfers any portion of the distribution to an IRA, then the distribution to the extent transferred shall not be includible in gross income for the taxable year in which it was distributed.

Code section 403(b)(8)(B) provides that rules similar to the rules of paragraph (2) through (7) of section 402(c) shall apply for purposes of section 403(b)(8)(A).

Code section 402(c)(2) provides that in the case of an eligible rollover distribution, the maximum amount transferred to which paragraph (1) applies (which provides the exclusion from income with respect to an eligible rollover distribution to an eligible retirement plan) shall not exceed the portion of the distribution that would be includible

in gross income (determined without regard to paragraph (1)).

Code section 402(c)(3) provides that paragraph (1) does not apply to a transfer made after the 60th following the date of receipt.

Code section 402(c)(8) defines an eligible retirement plan for purposes of subsection (c) as including an IRA described under section 408(a).

Code section 402(c)(4) defines an 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 that the term doesn't include any distribution which is one of a series of substantially equal periodic payments made for the life or life expectancy of the employee or joint lives or join life expectancies of the employee and the employee's spouse, or for a specified period of ten years or more; any distribution to the extent such distribution is a required minimum distribution under section 401(a)(9); and any hardship distribution.

Section 1.402(c)-2 Q&A 12(a) of the federal Income Tax Regulations (the "regulations") provides that 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.

Code section 403(b)(10) provides that section 403(b) does not apply to an annuity contract unless it satisfies the requirements of section 401(a)(31).

Code section 401(a)(31) imposes a requirement that a qualified plan provide employees with the opportunity to make a direct rollover in the form of a trustee to trustee transfer of an eligible rollover distribution to an eligible retirement plan.

Generally, if a decedent's 403(b) proceeds pass through a third party, i.e., a trust or an estate, and then are distributed to the decedent's surviving spouse, the spouse would be treated as acquiring them from the third party and not from the decedent. Thus, generally, the surviving spouse would not be eligible to roll over such plan proceeds into his or her own IRA under section 1.402(c)-2 of the regulations.

However, if the executor of the estate which distributes the 403(b) proceeds to a surviving spouse has no discretion with respect to payment of the proceeds to the surviving spouse, then the surviving spouse for purposes of Code sections 403(b)(8) and 402(c) is treated as having acquired the plan proceeds from the decedent and not from the estate.

In this case, the Executor has discretion to allocate assets to Trust G and thus, we will assume for purposes of this ruling request that the TSAs will be used to fund Trust G up to the unified credit of $675,000. The Executor has no discretion in paying the balance of the TSAs, Sum C, to Individual A since Individual A is the sole residuary beneficiary

of the Estate. Thus, we conclude with respect to your first and second ruling requests that Individual A will be treated as the payee or distributee of the Rollover Amount and as receiving such amount directly from the Decedent and not the Decedent's Estate.

Regarding ruling requests (3) and (4), because the Rollover Amounts or a portion thereof will be transferred pursuant to a direct rollover from the Decedent's 403(b) annuities to an IRA owned by the surviving spouse, the amount transferred will qualify as a tax-deferred rollover and will not be includible in Individual A's gross income for federal income tax purposes for the year of distribution and rollover.

This ruling assumes that the TSAs qualify as annuities described under Code section 403(b) and that Individual A's IRA will satisfy the requirements of section 408(a) at all relevant times.

This ruling is directed solely to the taxpayer who requested it. Code section 6110(k)(3) 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 is being sent to your authorized representative. Should you have any questions or concerns, please contact .

Sincerely yours,

Andrew E. Zuckerman, Manager
Employee Plans Technical Branch 1

Enclosures:
Deleted copy of ruling
Notice 437

cc: