199928040

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Significant Index No: 402.08-05

Person to Contact:
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Telephone Number:
(202) 622-****
Refer Reply to:
OP:E:EP:T:*
Date:

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APR 20 1999

Legend:

State A = **********
Corporation M = **********
Taxpayer A = **********
Taxpayer B = **********
Taxpayer C = **********
Taxpayer D = **********
Taxpayer E = **********
Taxpayer F = **********
Plan X = **********
Plan Y = **********
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IRA A = **********
IRA B = **********
IRA C = **********
IRA D = **********

Dear M**********

This is in response to a ruling request dated September 30, 1998, as supplemented by information dated March 18, 1999, submitted on your behalf by your authorized representative, regarding section 408(d)(3) of the Internal Revenue Code.

The following facts and representations have been submitted on your behalf:

Taxpayer A, a resident of State A, was born on October 30, 1933 and is the surviving spouse of Taxpayer B. Taxpayer B was born on June 10, 1914 and died on July 15, 1996 at the age of 82. At the time of Taxpayer B's death, he had been receiving minimum required distributions annually from Plan X and Plan Y, qualified retirement plans under section 401(a) of the Code maintained by Corporation M. Taxpayer B is also survived by his children, Taxpayer C, Taxpayer D, Taxpayer E and Taxpayer F.

On May 12, 1992, Taxpayer B, as a participant in Plans X and Y, executed a beneficiary designation form naming Taxpayer A as the designated beneficiary, to which Taxpayer A consented on May 12, 1992.

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Plan X was terminated, effective May 31, 1997, and the applicable assets attributable to Taxpayer B's account in the amount of $1,013,456 were transferred to Individual Retirement Accounts ("IRAs") A, B, C and D in the name of Taxpayer A with each of her children, Taxpayers C, D, E and F named as the designated beneficiary in each IRA, respectively, pending a ruling by the Internal Revenue Service on this request.

Taxpayer A has received a minimum required distribution from Plan X for the 1997 calendar year in the amount of $44,195.16, which was based on Taxpayer A's life expectancy.

As of September 30, 1998, the proceeds of Taxpayer B's interest in Plan Y have not been distributed other than a required minimum distribution in the amount of $83,596.74 for the 1997 calendar year, made payable to and based on the life expectancy of Taxpayer A, Taxpayer B's beneficiary, pending receipt of a ruling from the Service.

Taxpayer A proposes to direct that the proceeds of Taxpayer B's account balance in Plan Y, less any required minimum distribution under section 401(a)(9) of the Code for 1998 be transferred via fed wire in equal amounts to four IRAs, each of which will be set up in Taxpayer A's name, with each of Taxpayer A's children, Taxpayers C, D, E and F, named as designated beneficiary, respectively to said IRAs. Upon Taxpayer A's attainment of age 70 1/2, she will select a Code section 401(a)(9) minimum distribution period based on her and the designated IRA beneficiary's joint life expectancy that complies with the minimum distribution incidental benefit rules. The transfers will commence no later than December 31, 2007.

Based on the foregoing facts and representations, your authorized representative has requested rulings that:

(1) Pursuant to sections 402(c)(1), (4), (5) and (9), of the Code, Taxpayer A not be required to include in income, for federal income tax purposes for the tax year in which the proceeds of Taxpayer B's account balance in Plan Y are distributed to her, any portion of such amounts which will be distributed to her provided that all such amounts are rolled over into a series of IRAs within sixty days of receipt by Taxpayer A and that such transfer will satisfy section 401(a)(9)(B) with respect to the minimum required distribution period for Taxpayer B's account balance in Plan Y in effect as of the date of Taxpayer B's death, and provided that such minimum required distribution period conforms to the minimum distribution incidental benefit rules under section 1.401(a)(9)-2 of the proposed income tax regulations; and,

(2) Pursuant to sections 402(c)(1), (4), (5) and (9) of the Code, Taxpayer A not be required to include in income for federal income tax purposes for the 1997 tax year, any portion of the proceeds

from Plan X which were rolled over into IRAs A, B, C and D within sixty days of receipt by Taxpayer A in 1997 and that such transfer will have satisfied the section 401(a)(9)(B) minimum distribution period for Taxpayer B's account balance in Plan X in effect as of the date of Taxpayer B's death, and provided that such minimum distribution period conforms to the minimum distribution incidental benefit rules under section 1.401(a)(9)-2 of the proposed income tax regulations.

With respect to your ruling requests, 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)(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, 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 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, generally, 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 402(c)(5) of the Code provides, generally, that a transfer to an "eligible retirement plan" resulting in any portion of a distribution being excluded from gross income under section 402(c)(1) shall be treated as a rollover contribution described in section 408(d)(3).

Section 402(c)(9) of the Code provides, generally, if a

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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.

Section 401(a)(31)(A) of the Code provides that a trust shall constitute a section 401(a) qualified trust only if 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 such 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 in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified.

Section 401(a)(31)(B) of the Code provides that subparagraph (A) shall apply only to the extent that the eligible rollover distribution would be includible in gross income if not transferred as provided in subparagraph (A) (determined without regard to sections 402(c) and 403(a)(4)).

The term "eligible rollover distribution" when used in section 401(a)(31) of the Code has the same meaning as when used in section 402(c) of the Code.

The term "eligible retirement plan" when used in section 401(a)(31) of the Code includes IRAs defined in sections 408(a) and 408(b) of the Code.

Generally, a direct trustee-to-trustee transfer described in section 401(a)(31) of the Code constitutes a "direct rollover" of an "eligible rollover distribution" and is entitled to tax-deferred treatment pursuant to section 402(c) of the Code.

Section 1.402(c)-2T of the Temporary Income Tax Regulations, Question and Answer 10, provides, generally, that if a distribution attributable to an employee is paid to the employee's surviving spouse, sections 402(c) and 401(a)(31) apply to the distribution in the same manner as if the spouse were the employee. Q&A 10 further provides that only IRAs described in sections 408(a) and (b) of the Code are treated as eligible retirement plans for purposes of receiving distributions made to surviving spouses of deceased employees/plan participants.

Section 1.408-8 of the proposed regulations, question and answer A-6, provides, in pertinent part, that a surviving spouse of an

employee who rolls over a distribution from a section 401(a) qualified plan into an IRA may elect to treat the IRA as the spouse's own IRA in accordance with the provisions of Q&A A-4.

Section 1.408-8 of the proposed regulations, Q&A A-4, provides that a surviving spouse is the only individual who may elect to treat a beneficiary interest in an IRA as the beneficiary's own account. Q&A A-4 further provides, in pertinent part, that an election will be considered to have been made by a surviving spouse if either of the following occurs: (1) any required amounts in the account (including any amounts that have been rolled over or transferred, in accordance with the requirements of section 408(d)(3)(A)(i), into an IRA for the benefit of such surviving spouse) have not been distributed within appropriate time period applicable to the decedent under section 401(a)(9)(B), or (2) any additional amounts are contributed to the account (or to the account or annuity to which the surviving spouse has rolled such amounts over, as described in (1) above) which are subject, or deemed to be subject, to the distribution requirements of section 401(a)(9)(A). The result of such an election is that the surviving spouse shall then be considered the individual for whose benefit the trust is maintained.

The above cited sections of the proposed regulations do not preclude a surviving spouse's receiving a distribution from a Code section 401(a) qualified retirement plan and rolling over, or transferring, said distribution into more than one IRA and treating each of the several IRAs as her own IRA.

In this case, Taxpayer A will receive a distribution of the full amount due her from Plan Y. She will then roll over, or transfer by wire, pursuant to sections 402(c)(9) and 401(a)(31) of the Code, the distributed amount, less any portion of the distribution required under Code section 401(a)(9), into a series of four IRAs set up and maintained on her behalf. Such action on the part of Taxpayer A constitutes an election on her part to treat the IRAs as her own IRAs and is consistent with the regulation cited above.

When Plan X terminated in 1997, Taxpayer B's interest was transferred to IRAs A, B, C, and D. These IRAs are in Taxpayer A's name and her children are named as designated beneficiaries. Such action constitutes an election by Taxpayer A to treat the IRAs as her own IRAs and is consistent with the regulations cited above.

The effect of a surviving spouse's electing to treat a deceased's IRA(s) as her own is to subject the surviving spouse's IRA(s) interests to the distribution requirements of Code section 401(a)(9)(A) which requirements which are made applicable to IRAs pursuant to Code section 408(a)(6).

Section 401(a)(9)(A)(ii) of the Code provides, in relevant part, that a trust shall not constitute a qualified trust under this subsection unless the plan provides that the entire interest of each

employee will be distributed, beginning not later than the required beginning date, in accordance with regulations, 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 408(a)(6) provides that rules similar to the rules of section 401(a)(9) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

Code section 401(a)(9)(C) provides that the term "required beginning date" means April 1 of the calendar year following the calendar in which the plan participant, or IRA holder, attains age 70-1/2.

Section 1.401(a)(9)-1(b), Q&A D-3(a), of the proposed regulations states, in part, that, generally, for purposes of calculating the distribution period described in Code section 401(a)(9)(A)(ii) (for distributions before death), the designated beneficiary will be determined as of the employee's required beginning date. Section 1.408-8, Q&A A-3, and section 1.401(a)(9)-1, Q&A B-2(a), provide, in relevant part, that the required beginning date is April 1 of the calendar year after the calendar year in which the individual reaches age 70-1/2.

Section 1.401(a)(9)-1, Q&A F-1(b) and (c), of the proposed regulations states, in part, that the distribution required to be made on or before the employee's required beginning date shall be treated as the distribution required for the employee's first distribution calendar year. A calendar year for which a minimum distribution is required is a distribution calendar year. The first calendar year for which a distribution is required is an employee's first distribution calendar year. The distribution required for distribution calendar years (other than a distribution required to be made on or before the employee's required beginning date) must be made on or before December 31 of that distribution calendar year.

The above minimum required distribution rules apply to a surviving spouse who sets up and maintains a rollover IRA pursuant to section 408(d)(3) of the Code. Thus, such spouse may designate an individual as a beneficiary of said IRA and required distributions from said IRA may be made over the joint life expectancy of the surviving spouse and her designated beneficiary. Therefore, in this case, Taxpayer A may designate her children as beneficiaries of IRAs A, B, C, and C, and the series of four IRAs which will receive the rollover distribution from Plan Y. Distributions from these IRAs may be made over the joint life expectancy of Taxpayer A and her designated beneficiaries.

Section 408(a)(6) of the Code also provides that 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.

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Section 1.408-8 of the proposed regulations, Q&A B-13, provides, in pertinent part, that for calendar years after 1988, IRA distributions must satisfy the incidental benefit rule of section 1.401(a)(9)-2 which applies to calendar years after 1988.

Section 1.401(a)(9)-2 of the proposed regulations, Q&A-4 through Q&A-7, set down the rules governing the minimum distribution incidental benefit (MDIB) requirement. Such MDIB requirement is applicable to a rollover IRA set up and maintained by a surviving spouse. In general, the MDIB requirement is deemed to be satisfied if the IRA owner's beneficiary is his spouse. However, in the case where the IRA owner's beneficiary is not his spouse, the MDIB requirement provided in section 1.401(1)(9)-2 or the proposed regulations, Q&A-6(b) must be satisfied. Therefore, such MDIB requirement is applicable to Taxpayer A because neither Taxpayer C, Taxpayer D, Taxpayer E nor Taxpayer F is her spouse.

Thus, with respect to your ruling requests, we conclude as follows:

1. That pursuant to sections 402(c)(1), (4), (5) and (9) of the Code, Taxpayer A will not be required to include in income, for federal income tax purposes for the tax year in which the proceeds of Taxpayer B's account balance in Plan Y are distributed to her, any portion of such amounts which will be distributed to her provided that all such amounts are rolled over into IRAs A, B, C and D within sixty days of receipt by Taxpayer A and that such transfer will satisfy section 401(a)(9)(B) with respect to the minimum required distribution period for Taxpayer B's account balance in Plan Y in effect as of the date of Taxpayer B's death, and provided that such minimum required distribution period conforms to the minimum distribution incidental benefit rules under section 1.401(a)(9)-2 of the proposed income tax regulations; and,

2. That pursuant to sections 402(c)(1), (4), (5) and (9) of the Code, Taxpayer A is not required to include in income for federal income tax purposes for the 1997 tax year, any portion of the proceeds from Plan X which were rolled over into IRAs A, B, C and D within sixty days of receipt by Taxpayer A in 1997 and that such transfer will have satisfied the section 401(a)(9)(B) minimum distribution period for Taxpayer B's account balance in Plan X in effect as of the date of Taxpayer B's death, and provided that such minimum distribution period conforms to the minimum distribution incidental benefit rules under section 1.401(a)(9)-2 of the proposed income tax regulations.

This letter ruling is based on the assumption that Plan X and Plan Y are qualified under Code section 401(a) and their related trusts are tax-exempt under Code section 501(a) at all times relevant thereto. It also assumes that each of the four IRAs referenced herein will meet

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the requirements of Code section 408(a).

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,

(signed) JOYCE E. FLOYD

Joyce E. Floyd
Chief, Employee Plans
Technical Branch 2

Enclosures:
Deleted copy of ruling letter
Form 437

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