WIL: 402.00-00

INTERNAL REVENUE SERVICE

200212036

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DEC 28 2001

T:EP:RA:T2

Legend:

Taxpayer A = **********
Taxpayer B = **********
Employer M = **********
Plan X = **********
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Amount 1 = **********
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State A = **********
Court C = **********
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Dear M**********

This letter is in response to a ruling request dated February 1, 2001, as supplemented by correspondence dated July 16, October 18, and December 10, 12, and 19, 2001, submitted on your behalf by your authorized representative, for certain rulings under section 402(c) of the Internal Revenue Code (Code).

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

Taxpayer A and Taxpayer B were married on March 4, 2000 in State A. At that time, Taxpayer A was a participant in Plan X maintained by Employer M. You represent that Plan X is qualified under section 401(a) of the Code and its trust tax-exempt under section 501(a) of the Code.

Taxpayer A died on October 13, 2000 at age 56, survived by Taxpayer B. Taxpayer A executed his Last Will and Testament ("Will") on December 28, 1999. Pursuant to Section 3.1 of Taxpayer A's Will, Taxpayer B will receive all of Taxpayer A's

sole beneficiary of Taxpayer A's estate, the general rule will not apply.

Based on the facts as above stated, 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 Plan X proceeds from Taxpayer A and not from Taxpayer A's estate.

Taxpayer B, as sole executrix and sole beneficiary of Taxpayer A's estate, intends to exercise her right as beneficiary of the Plan X assets by making a distribution, to her, of the Plan X proceeds after such funds have been distributed by Employer M to Taxpayer A's estate. Taxpayer B then intends to roll over the Plan X distribution to an IRA established in her own name no later than the 60th day after the date on which the Plan X distribution is received by Taxpayer A's estate.

The foregoing references would permit Taxpayer B, a surviving spouse, to treat the distribution from Plan X as an eligible rollover distribution. The Plan X distribution (Amount 1) will be the only distribution made from Taxpayer A's Plan X account. Taxpayer A had not attained age 70 1/2 at the time of his death and would not have attained such age by the end of the calendar year 2001. Thus, said distribution is not ineligible to be treated as an eligible rollover distribution under section 402(c)(4)(A) of the Code.

Therefore, with respect to ruling request one, we conclude that Taxpayer B is eligible to roll over the distribution of the proceeds of Taxpayer A's Plan X account into an IRA set up and maintained by her in her own name as long as the rollover of such distribution occurs no later than the 60th day from the date such distribution is received by Taxpayer B as sole executrix and sole beneficiary of Taxpayer A's estate. We further conclude that, with respect to ruling request two, to the extent that the distribution from Plan X is rolled over into an IRA established and maintained by Taxpayer B in her own name within the time frame specified in section 402(c)(3) of the Code, the rolled over amounts will not be includible in Taxpayer B's gross income in the year in which such amounts are distributed and rolled over.

This ruling letter assumes that Plan X is qualified under section 401(a) of the Code at all times relevant to this transaction. In addition, the ruling also assumes that the

property

Section 2.1 of Taxpayer A's Will defines property as the property subject to this Will of which Taxpayer A die possessed, of what ever property nature or kind, wherever located and however acquired, whether owned by me or hereafter acquired". Taxpayer B was named as executrix of Taxpayer A's estate under section 4.1 of Taxpayer A's Will.

Taxpayer A's Will was probated in Court C. In a Judgment of Possession Order signed on October 31, 2000, Taxpayer B was recognized by Court C as the owner (of Taxpayer A's property) and sent into possession of all property belonging to Taxpayer A. There are no contingent beneficiaries named under Taxpayer A's Will.

At the time of his death, Taxpayer A was employed by Employer M and was a participant in Plan X. You represent that Plan X, a non-contributory defined benefit pension plan, is qualified under section 401(a) of the Code and its trust tax-exempt under section 501(a). As of his date of death, Taxpayer A's interest in Plan X was Amount 1, the current value of which is approximately $170,000. Taxpayer A did not complete a retirement plan beneficiary designation at any time while he was employed by Employer M. Article IV, Section C, Payment of Death Benefits of Plan X provides, in part, that any death benefits attributable to Employee contributions provided under this Plan which are distributable before distribution to the member began, shall be distributed to the Member's Spouse, if the member is married, or to his estate if he is unmarried. "Spouse", in pertinent part, as defined in Plan X means, "the person to whom a Member has been married for twelve months as of the relevant date". Since Taxpayer A was married to Taxpayer B for a period of less than twelve months immediately preceding Taxpayer A's date of death, Employer M intends to pay the retirement benefit due Taxpayer A in a lump sum to Taxpayer A's estate.

Taxpayer B, as sole executrix and sole beneficiary of Taxpayer A's estate intends to make a distribution of the Plan X death benefit proceeds that will be paid to Taxpayer A's estate to an individual retirement arrangement (IRA) established by her, in her own name, no later than the sixtieth day after the date on which the Plan X distribution is received by the estate.

Based on the above facts and representations, Taxpayer B requests the following rulings:

1. That the distribution from Plan X to Taxpayer B, as sole executrix and sole beneficiary of Taxpayer A's estate, constitutes an eligible rollover distribution pursuant to section 402(c)(1) and section 402(c)(9) of the Code; and,

2. That to the extent that the Plan X distribution is rolled over to an IRA established and maintained in the name of Taxpayer B within the time frame specified in section 402(c)(3) of the Code, the rolled over distribution from Plan X will not be includible in Taxpayer B's gross income in the year in which it is paid to Taxpayer A's estate.

Section 402(a)(1) of the Code provides, in general, that any amount actually distributed to any distributee by any employee's trust described in Code section 401(a) which is exempt from tax under Code section 501(a) shall be taxable to the distributee in the taxable year of the distributee in which distributed, under Code section 72 (relating to annuities).

Section 402(c)(1) of the Code provides, generally, that if any portion of an eligible rollover distribution from a qualified trust 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)(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 which the distributee received the property distributed.

Section 402(c)(4) of the Code defines "eligible rollover distribution" as any distribution to an employee of all or a portion of the balance to the credit of an employee in a qualified trust; except that the term shall not include--

(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 expectancies or the joint life expectancies) of the employee and the employee's designated beneficiary, or 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)(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) qualified retirement plan, and (iv) an annuity plan described in section 403(a).

Section 1.402(c)-2 of the Income Tax Regulations, Q&A-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 1/2 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. Thus, a distribution to the surviving spouse of an employee is an eligible rollover distribution if it meets the applicable requirements of sections 402(c)(2) and (4) and the associated regulations.

As a general rule, if a decedent's qualified plan 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, the surviving spouse will be not be eligible to roll over the qualified plan proceeds into his/her own IRA.

In this case, Taxpayer A's estate is the beneficiary of Taxpayer A's interest in Plan X. As sole executrix of all of Taxpayer A's property and of his estate, Taxpayer B has the authority to dispose of the assets of Taxpayer A's estate. Under the provisions of Taxpayer A's Will, Taxpayer B is the sole beneficiary of Taxpayer A's estate. Therefore, in view of Taxpayer B's authorized control under the provisions of Taxpayer A's Will of Taxpayer A's estate, and in view of her status as

rollover of the distribution of Taxpayer A's Plan X proceeds to Taxpayer B's IRA will take place in a timely fashion. Further, this ruling assumes that the IRA set up and maintained in the name of Taxpayer B, will meet the requirements of section 408 of the Code at all times relevant to the proposed transaction.

These rulings are directed only to the taxpayer who requested them. Section 6110(k)(3) of the Code provides that they may not be used or cited by others as precedent.

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

If additional information is needed, please contact

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2
Tax Exempt and Government Entities
Division

Enclosures:
Deleted copy of Letter
Notice of Intention to Disclose

cc: **********
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