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

200510035

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UICs: 401.06-01
402.08-01

DEC 14 2004

SE:T:EP:RA:T3

LEGEND:

Taxpayer A=

Taxpayer B =

Company B =

Plan X =

Date 1 =

Date 2 =

Year 2 =

Year 3 =

Dear [redacted] :

This is in response to the , letter, submitted on your behalf by your authorized representative, as supplemented by correspondence dated , in which you request a letter ruling with respect to distributions from a retirement plan qualified within the meaning of section 401(a) of the Internal Revenue Code made pursuant to your section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) election. The following facts and representations support your ruling request.

Taxpayer A is a participant in Plan X which is sponsored by Company B. Your authorized representative asserts on your behalf that Plan X is a defined contribution profit-sharing plan that is qualified within the meaning of section 401(a) of the Internal Revenue Code, and that its trust is tax-exempt under Code section 501(a).

On Date 1, 1983, Taxpayer A signed a "Distribution Election" with respect to his interest in Plan X which referenced section 242(b)(2) of TEFRA and which was intended to serve as an election under said TEFRA section. Taxpayer A's Date 1, 1983, form mentioned Plan X and indicated that Taxpayer A intended to have lifetime distributions from Plan X commence at his retirement even if retirement came after his attainment of age 70 1/2. Furthermore, the form indicated that Taxpayer A intended to receive lifetime, post retirement, distributions in a lump sum. Date 1, 1983, predated December 31, 1983. At the time Taxpayer A signed his section 242(b)(2) election, he was a [redacted]% owner of Company B and remains such as of the date of this ruling request.

The Internal Revenue Service has previously determined that Taxpayer A's Date 1, 1983 election complied with the requirements of section 242(b)(2) of TEFRA and Notice 83-23, 1983-2 C.B. 418 (See letter ruling 200034031).

Taxpayer A's date of birth was Date 2, 1920; thus, Taxpayer A had attained age 70 ½ as of the date of this ruling request.

Taxpayer A anticipates that he will retire in either Year 2 or Year 3. Pursuant to his section 242(b)(2) election, Taxpayer A will receive the full amount standing to his credit under Plan X in the form of a lump sum. Said payment to Taxpayer A will not violate the terms of Plan X. Furthermore, your authorized representative has asserted on your behalf, that the distribution from Plan X does not require consent of Taxpayer A's spouse, Taxpayer B.

Pursuant to his request to have all amounts due him under Plan X paid to him, Taxpayer A will contribute, by means of a trustee to trustee transfer, the full amount of the distribution into an IRA set up and maintained in the name of Taxpayer A. Taxpayer A will then begin receiving distributions intended to comply with the minimum required distribution rules of Code sections 401(a)(9) and 408(a)(6) from his rollover IRA.

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

1. That the entire distribution made to Taxpayer A from Plan X pursuant to Taxpayer A's section 242(b)(2) of TEFRA election may be rolled over, or transferred by means of a trustee to trustee transfer, into an IRA set up and maintained in the name of Taxpayer A, and that such rollover, or transfer, will satisfy the requirements of Code section 402(c); and

2. that for purposes of determining required distributions from Taxpayer A's rollover IRA, the amounts will be determined under Code section 401(a)(9). Furthermore, the requirements of Code section 401(a)(9) will not be imposed with respect to the period beginning with the calendar year in which Taxpayer A attained age 70 ½ and ending with the calendar year in which the Plan X distribution is made.

With respect to your ruling requests, Code section 401(a)(9)(A) provides, in general, that a trust will not be considered qualified unless the plan provides that the entire interest of each employee-

(i) will be distributed to such employee not later than the required beginning date, or

(ii) will be distributed, beginning not later than the required beginning date, over the life of such employee or over the lives of such employee and a designated beneficiary or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary.

Code section 401(a)(9)(C)(i) provides, in relevant part, that, for purposes of this paragraph, the term "required beginning date" means 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. Code section 401(a)(9)(C)(ii) provides that in the case of an employee who is a five (5) percent owner of an incorporated entity, the distribution rule found in Code section 401(a)(9)(C)(i)(II) does not apply.

"Final" Income Tax Regulations under Code sections 401(a)(9) and 408(a)(6) were published in the Federal Register at 67 Federal Register 18987-19028 (April 17, 2002), and in the Internal Revenue Bulletin at 2002-19 I.R.B. 852 (May 13, 2002). The Preamble to the "Final" Regulations, in relevant part, provide that the regulations apply for determining required minimum distributions for calendar years beginning after January 1, 2003.

Section 1.401(a)(9)-8 of the "Final" Regulations provides guidance with respect to TEFRA section 242(b)(2) elections. Q&A-13 under section 1.401(a)(9)-8 provides that although the distribution requirements added by TEFRA were retroactively repealed by TRA of 1984, the transitional election rule in TEFRA section 242(b)(2) was preserved. Thus, a plan may make distributions in accordance with such an election without adversely affecting its Code section 401(a) qualified status.

Q&A-15 under section 1.401(a)(9)-8 provides that if an amount is distributed from one plan to another, the receiving plan must make distributions in accordance with Code section 401(a)(9) even if the distributee had a valid section 242(b)(2) of TEFRA election under the distributing plan.

Q&A-16 under section 1.401(a)(9)-8 provides that a TEFRA section 242(b)(2) election may be revoked. If such an election is revoked after the date by which distributions are required to commence in order to satisfy Code section 401(a)(9), the plan must distribute amounts sufficient to satisfy Code section 401(a)(9) with respect to all years to which the requirements of Code section 401(a)(9) apply including years prior to the year of revocation to the extent said amounts had not been distributed prior to the revocation. Said distribution must be made no later than the end of the calendar year following the calendar year in which the revocation occurs.

Section 402(a) of the Code, in general, provides that amounts distributed from a retirement plan qualified within the meaning of Code section 401(a) are taxed under section 72 (relating to annuities).

Code 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)) but states that this maximum limitation does not apply to a distribution transferred to an eligible retirement plan

described in clause (i) or (ii) of section 402(c)(8)(B).

Section 402(c)(3)(A) of the Code provides that, except as provided in subparagraph (B), paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distribute received the property distributed.

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)(c), and

(C) any distribution which is made upon the hardship of the employee.

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, (iv) an annuity plan described in section 403(a), (v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and (vi) an annuity contract described in section 403(b).

Section 1.402(c)-2, Question and Answer 3, of the Income Tax Regulations provides, in relevant part, that except as specifically provided in Q&A-4(b) of this section, any amount distributed to an employee...from a qualified plan is an eligible rollover distribution. Q&A-4(b) does not contain an exclusion for distributions made in accordance with a valid section 242(b)(2) of TEFRA election.

Section 1.402(c)-2, Question and Answer 11, of the Income Tax Regulations states that if an eligible rollover distribution is paid to an employee and the employee contributes all or part of the eligible rollover distribution to an eligible retirement plan no later than the 60th day following the date the employee received the distribution, the amount contributed is not currently includible in gross income.

Section 401(a)(31)(A) of the Code provides that, in general, a trust will not constitute a qualified trust under this section unless 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 the 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 made in the form of a direct trustee to trustee transfer to the eligible retirement plan.

Section 401(a)(31)(C) of the Code provides, in relevant part, 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), 403(a)(4) and 457(e)(16) of the Code. The preceding sentence shall not apply to such distribution if the plan to which such distribution is transferred—(ii) is an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B).

Section 1.401(a)(31)-1 of the regulations, Q&A-15, provides that a direct rollover described in Code section 401(a)(31) is to be treated as a distribution and rollover of an eligible rollover distribution.

With specific respect to your first ruling request, it has been represented that the payment from Plan X to Taxpayer A will be made in accordance with (IAW) Taxpayer A's Date 1, 1983 TEFRA section 242(b)(2) election, Thus, the payment will not result in a revocation of said election.

In general, a revocation of a TEFRA section 242(b)(2) election could result in catch-up required distributions IAW the Q&A-16 of section 1.401(a)(9)-8 of the "Final Regulations" cited above. The amount of the distribution that exceeded the amount of "catch-up" distributions, if any, would be eligible to be rolled over into an IRA as long as the plan distribution otherwise met the requirements of Code section 402(c).

A distribution that does not revoke a TEFRA section 242(b)(2) election lies outside the ambit of Q&A-16 of section 1.401(a)(9)-8. Thus, no portion of said distribution is a required distribution within the meaning of Code section 401(a)(9). Therefore, as long as the distribution otherwise complies with the requirements of Code section 402(c), it may be rolled over, or transferred by means of a trustee to transfer IAW Code section 401(a)(31), into an IRA.

In this case, Taxpayer A is eligible to receive a distribution of the full amount due him under Plan X in a single sum because of his retirement from Company B. He will request payment thereof, and intends to transfer the full amount due him, by means of a trustee to trustee transfer, into an IRA set up and maintained in his name. The payment to Taxpayer A will not be in the form of an annuity and will not be made on account of "hardship".

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

1. That the entire distribution made to Taxpayer A from Plan X pursuant to Taxpayer A's TEFRA section 242(b)(2) election may be rolled over, and transferred by means of a trustee to trustee transfer, into an IRA set up and maintained in the name of Taxpayer A, and that such rollover, or transfer, will satisfy the requirements of Code section 402(c).

If Taxpayer A's Plan X payment is received as a distribution and rolled over into his IRA, the rollover must be made within the time frame provided under Code section 402(c)(3)(A).

With specific respect to your second ruling request, section 1.401(a)(9)-7 of the Final Regulations, Q&A-2, provides, in summary, that if an amount is distributed from a distributing plan and rolled over into a receiving plan, the benefit of the distributee employee under the receiving plan is increased by the amount rolled over for purposes of computing the Code section 401(a)(9) minimum required distribution with respect to the calendar year immediately following the calendar year in which the amount rolled over is distributed.

Section 1.408-8 of the Final Regulations, Q&A-6, provides, in general, that for purposes of determining the amount of a minimum required distribution from an IRA for a calendar year, the account balance of the IRA as of the December 31 immediately preceding the calendar year for which distributions are required to be made is used.

With respect to your second ruling request, amounts distributed from a qualified plan pursuant to a TEFRA section 242(b)(2) election and rolled over, or transferred by means of a trustee to trustee transfer, into an IRA no longer remain subject to the TEFRA election. Distribution of such rolled over or transferred amounts must be made in accordance with the requirements of Code sections 401(a)(9) and 408(a)(6) and the Final Regulations promulgated thereunder. As noted above, a Code section 401(a)(9) required distribution must be made with respect to any amounts distributed from Plan X and rolled over or transferred by Taxpayer A into an IRA set up and maintained in his name no later than the calendar year following the calendar year in which the amounts are distributed from Plan X.

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

2. That for purposes of determining required distributions from Taxpayer A's rollover IRA, the amounts will be determined under Code section 401(a)(9). Furthermore, the requirements of Code section 401(a)(9) will not be imposed with respect to the period beginning with the calendar year in which Taxpayer A attained age 70 ½ and ending with the calendar year in which the Plan X distribution is made.

This letter ruling assumes that Plan X is and has been qualified within the meaning of Code section 401(a) and its trust exempt from tax under Code section 501(a) at all times relevant thereto. It also assumes that the rollover IRA to be set up in the name of Taxpayer A will meet the requirements of Code section 408(a) at all times relevant thereto. Finally, it assumes that if the Plan X distribution is rolled over into Taxpayer A's IRA, the rollover will be made within the time frame prescribed under Code section 402(c)(3)(A).

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 in this office, a copy of this letter ruling is being sent to your authorized representative.

200510035

The Internal Revenue Service's point of contact with respect to this letter ruling is . , Esq., who may be contacted at [redacted] (phone number-not toll-free) or [redacted] (FAX).

Sincerely yours,

Frances V. Sloan
Manager, Employee Plans
Technical Group 3

Enclosures:
Deleted copy of letter ruling
Form 437