



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

200524032

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UIC 401.06-00
401.06-01

MAR 23 2005

SE:T:EP:RA:T3

LEGEND:

Taxpayer A:

Law Firm B:

Plan X:

State W:

Month 1:

Percentage 1:

Percentage 2:

Dear [REDACTED]

This is in response to your [REDACTED], letter, as supplemented by a FAX dated [REDACTED], in which you request several letter rulings under section 401(a)(9) of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request.

Taxpayer A, a resident of State W, is an attorney actively practicing as a member of Law Firm B. Taxpayer A attained age 70 ½ in Month 1, 2004. Law Firm B is a partnership.

Law Firm B sponsors Plan X which is represented to be qualified within the meaning of Code section 401(a), and to have an attached trust tax-exempt within the meaning of Code section 501(a). Plan X's Plan year is the calendar year.

Section 6.5(c) of Plan X contains language intended to comply with the requirements of Code section 401(a)(9). In relevant part, section 6.5(c) provides that "...a Participant's benefits shall be distributed or must begin to be distributed not later than April 1st following the later of (i) the calendar year in which the Participant attains age 70 ½ or (ii) the calendar year in which the Participant retires, provided, however, that this clause (ii) shall not apply in the case of a Participant who is a "five (5) percent

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owner" at any time during the Plan Year ending with or within the calendar year in which such owner attains age 70 ½".

Taxpayer A has provided the Internal Revenue Service with information that indicates, with respect to calendar year 2004, his capital interest in Law Firm B was Percentage 1, and his profits interest was Percentage 2. Neither Percentage 1 nor Percentage 2 equaled or exceeded 5.

Pursuant to the provisions of Plan X, Taxpayer A has provided the administrator of Plan X with a form pursuant to which he elected to defer receiving distribution of his Plan X benefits until the calendar year following the calendar year in which he retires from Law Firm B. This ruling request deals with the propriety of said election.

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

1. That Taxpayer A is not a 5-percent owner within the meaning of Code section 401(a)(9) with respect to calendar year 2004, the calendar year in which he attained age 70 ½;
2. Since Taxpayer A is not a 5-percent owner for purposes of Code section 401(a)(9), and since he remains an attorney actively practicing law with Law Firm B, he is not required, under Code section 401(a)(9), to begin receiving minimum required distributions from Plan X by April 1, 2005; and
3. If Taxpayer A does not begin receiving distributions from Plan X by April 1, 2005, he will incur no excise tax consequences under section 4974 of the Code.

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 § 401(a)(9)(C)(i) provides that, for purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the later of (I) the

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calendar year in which the employee attains age 70 ½, or (II) the calendar year in which the employee retires.

Code § 401(a)(9)(C)(ii)(I) provides that subclause (II) of clause (i) shall not apply, except as provided in section 409(d), in the case of an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains age 70 ½.

With further respect to your ruling requests, "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)-2 of the "Final" regulations, Question&Answer-2(c) provides, in general, that, for purposes of section 401(a)(9), a 5-percent owner is an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains age 70 ½.

Section II, Background, to Notice 97-75, 1997-51 I.R.B. 18 (December 22, 1997) provides, in relevant part, that an employee is treated as a 5-percent owner for purposes of Code section 401(a)(9) as amended by the Small Business Job Protection Act if such employee is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains age 70 ½. Once an employee is a 5-percent owner described in the preceding sentence, distributions must continue to such employee even if such employee ceases to own more than 5-percent of the employer in a subsequent year.

Code section 416(i)(B)(i)(II) provides that a 5-percent owner of an employer that is not a corporation means "...any person who owns more than 5 percent of the capital or profits interest in the employer".

Code section 4974(a) imposes a 50% excise tax on the amount by which a minimum required distribution from a "qualified retirement plan" during a taxable year of a payee exceeds the amount actually distributed from said plan during said year.

Code section 4974(b), in relevant part, provides that the term "minimum required distribution" includes an amount required to be distributed in accordance with Code section 401(a)(9).

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Code section 4974(c)(1) provides, in relevant part, that the term "qualified retirement plan includes a plan described in Code section 401(a) that includes a trust described in Code section 501(a).

With respect to your ruling requests, Taxpayer A attained age 70 ½ during calendar year [REDACTED] while employed with Law Firm B. Law Firm B sponsors Plan X which uses the calendar year as its Plan year. During the calendar year/Plan year ending on [REDACTED] Taxpayer A owned less than five (5) percent of either the capital or profits interest of Law Firm B. Taxpayer A does not intend to retire or separate from the service of Law Firm. Since Taxpayer A intends to remain employed by Law Firm B, in accordance with the provisions of Plan X, Taxpayer A has asked the administrator of Plan X to defer distribution of benefits from Plan X until after he retires from Law Firm B.

The facts indicate that Taxpayer A was not a five (5) percent owner during calendar year [REDACTED] thus, he is not subject to the rule of Code § 401(a)(9)(C)(ii)(I). Furthermore, since there is no Plan X required distribution with respect to Taxpayer A for calendar year 2004, failure to make any such distribution does not give rise to an excise tax under Code section 4974.

Therefore, based on the above facts and representations, the Service concludes as follows with respect to your ruling requests:

1. That Taxpayer A is not a 5-percent owner within the meaning of Code section 401(a)(9) with respect to calendar year [REDACTED] the calendar year in which he attained age 70 ½;
2. Since Taxpayer A is not a 5-percent owner for purposes of Code section 401(a)(9), and since he remains an attorney actively practicing law with Law Firm B, he is not required, under Code section 401(a)(9), to begin receiving minimum required distributions from Plan X no later than April 1, 2005; and
3. If Taxpayer A does not begin receiving distributions from Plan X by April 1, 2005, he will incur no excise tax consequences under section 4974 of the Code.

This ruling letter is based on the facts and representations contained therein including, but not limited to: (1) the accuracy of Percentages 1 and 2; (2) Plan X is qualified within the meaning of Code section 401(a), and its trust tax exempt under Code section 501(a) at all times relevant to; and (3) Taxpayer A is employed with Law Firm B.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

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This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact [REDACTED]
[REDACTED] (ID: [REDACTED]) at either [REDACTED] (Phone) or [REDACTED]
Please address all correspondence to [REDACTED]

Sincerely yours,

Frances V. Sloan
Frances V. Sloan, Manager,
Employee Plans Technical Group 3

Enclosures:

- Deleted copy of ruling letter
- Notice of Intention to Disclose