



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

200621020

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAR - 2 2006

UNIFORM ISSUE LIST: 402.00-00

T:EP:RA:TB

Legend:

Decedent A =
Trust C =
Sub-Trust D =
Sub-Trust E =
Sub-Sub-Trust F =
Sub-Sub-Trust G =
State F =
Date M =
Date N =
Date P =
Date Q =
Plan X =
Administrator S =

Dear

This is in response to your request for a private letter ruling, submitted by your authorized representative by letter dated August 18, 2005, concerning the proper rollover treatment of a distribution from Decedent A's retirement plan (Plan X) under section 457 of the Internal Revenue Code (Code). Correspondence dated August 26, 2005, and December 23, 2005, supplemented the request.

Your authorized representative has submitted the following facts and representations:

Decedent A and you were married on Date Q, , and continued to be married at all times up to the time of Decedent A's death. Decedent A was born on Date N, , and died on Date M, 2002. You were born on Date P, , and were alive as of the date of this request.

Decedent A participated in Plan X. Plan X is a tax exempt employee benefit plan described under section 457(e)(1)(A) of the Code. Plan X is administered by Administrator S. It has been represented that, as of the date of this ruling request, no distributions have been made from Plan X with respect to Decedent A's interest therein. It has also been represented that you have requested Administrator S to make a single sum distribution of Decedent A's Plan X assets to spousal rollover Individual retirement account ("IRA") set up and maintained in your name, but Administrator S, as Plan X administrator, will only make a distribution from Plan X to Trust C, the beneficiary designated on the beneficiary designation form. You desire to have all assets in Plan X distributed to a spousal rollover IRA in a tax free transaction.

Decedent A and you established Trust C, a joint revocable trust. Trust C is an A/B trust which provides for the establishment of several sub-trusts on the death of the first spouse. It has been represented that Trust C and all sub-trusts created thereunder are valid under State F law. Decedent A named Trust C as the beneficiary of her interest in Plan X. You consented to this designation.

Article V, paragraph B.1, of Trust C provides, that if Decedent A were to predecease you, the trustee of Trust C was to divide the trust estate into two sub-trusts: Sub-Trust D and Sub-Trust E.

After Decedent A's death, you became the sole surviving settlor of Trust C, and, pursuant to Article VII, paragraph A.2 of Trust C, became the sole Trustee thereof. You continue to serve as the sole Trustee of all the assets in Trust C. Thus, by reason of the death of Decedent A, you, as sole surviving Trustee, have complete dominion and control over the assets of Trust C and of Sub-Trust D into which the Plan X assets have been allocated.

Sub-Trust D is to consist of the Surviving Settlor's separate property and his share of the community property, including community property received by the Trustee from insurance, pension plans, and other sources upon or because of the Deceased Settlor's death. It has been represented that the Surviving Settlor's share of the community property shall be satisfied by allocating to Sub-Trust D residential properties or tangible properties selected by the Surviving Settlor and otherwise by division and allocation pursuant to the Trustee's powers. Additionally, Article V, paragraph B.1.a.(2) of Trust C, provides that if you survive Decedent A by at least 180 days, the minimum additional amount necessary as a marital deduction to

reduce or eliminate estate taxes are to be allocated to Sub-Trust D. You have survived Decedent A by more than 180 days. The remaining Trust C property shall be allocated to Sub-Trust E which shall be divided into Sub-Sub-Trust F and Sub-Sub-Trust G.

You, the surviving spouse, as sole Trustee of Trust C after Decedent A's death, and pursuant to the terms of Trust C, allocated all proceeds of Decedent A's interest in Plan X to Sub-Trust D. It is represented that you allocated sufficient other assets to Sub-Trust E to fully fund Sub-Sub-Trust F and Sub-Sub-Trust G.

Under Article V, paragraph B(4)(a), of Trust C, you as Trustee thereof, shall pay to or apply for your, the Surviving Settlor's, benefit the net income of Sub-Trust D in annual or more frequent installments and as much of the principal as the Trustee considers necessary for the Surviving Settlor's health, support, comfort, enjoyment, and general welfare, considering his or her accustomed standard of living and other resources available for these purposes. In short, you, as sole beneficiary and sole Trustee, have sole dominion and control of Sub-Trust D.

Article VI, paragraph B, of Trust C, provides, in short, that as sole surviving settlor, you can revoke Sub-Trust D in its entirety at any time. If Sub-Trust D is revoked the Trustee shall promptly deliver to the Surviving Settlor all or the designated portion of the assets, and also account for the Trustee's acts since the preceding accounting. Thus, you can revoke Sub-Trust D at any time and receive a distribution of all of the assets in Sub-Trust D.

Under Article VIII, paragraph Z, of Trust C, the Trustee thereof shall have the power to divide, allocate, and distribute the Trust Estate in undivided interests or in kind, or partly in money and partly in kind, at valuations determined by the Trustee, and to sell property to make divisions or distributions. The Trustee shall not be obligated to make pro rata divisions or allocations or to distribute the same assets to beneficiaries if the assets allocated or distributed have equivalent or proportionate fair market value.

Additionally, Article VIII, paragraph S, provides that the Trustee shall have the power to take any action and to make any election to minimize the tax liabilities of this trust and its beneficiaries, to allocate the benefits among the beneficiaries, and to make adjustments to compensate for the consequences of any tax elections, investment, or decision that the Trustee believes has had the effect of directly or indirectly preferring one beneficiary or group of beneficiaries over others.

The Probate Code of State F () provides that the trustee has the power to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation. A distribution in kind may be made pro rata, or non-pro rata and may be made pursuant to any written agreement providing for a non pro rata division of the aggregate value of the community property assets or quasi-community property assets.

As noted above, no distribution of any monies from Plan X has been made to date. You contemplate taking a single sum distribution from Plan X and depositing it into a checking account under the name of Trust C, the named beneficiary. Next, you, as sole Trustee of Trust C, will then write a check made payable to Sub-Trust D for the full amount of such distribution. Subsequently, you, as sole Trustee of Sub-Trust D will terminate said Sub-Trust after which you will write a check from said Sub-Trust D to your IRA account.

All of such checks will be written and deposited within 60 days from the date of the receipt of the initial single sum distribution check from Plan X. Thus, the final deposit to the spousal rollover IRA will take place before the expiration of the 60 day period as measured from the date of the initial receipt of the Plan X distribution by the trustee of Trust C.

Base on the foregoing, you request a ruling that the single sum distribution of the Plan X assets to Trust C with the subsequent distribution of such proceeds initially to Sub-Trust D and a final contribution of such proceeds to your spousal rollover IRA account is a tax free spousal rollover.

With respect to your ruling request, section 457 of the Code provides the rules governing deferred compensation plans of state and local governments and tax-exempt organizations. Section 457(e)(16) of the Code provides, in relevant part, that, in the case of an eligible retirement plan established and maintained by an employer described in section 457(e)(1)(A), if any portion of the balance to the credit of an employee in such plan is paid to such employee in an eligible rollover distribution (within the meaning of section 402(c)(4)), and the employee transfers any portion of the property such employee receives in such distribution to an eligible retirement plan described in section 402(c)(8)(B), then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(4) of the Code defines the term "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 for certain exceptions, none of which are applicable hereto.

Section 402(c)(8)(B) of the Code, in relevant part, 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 Code section 403(a).

Section 402(c)(3) of the Code provides, generally, that the exclusion from income 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 states that a transfer to an eligible retirement plan described in (i) or (ii) of subparagraph (8)(B) resulting in any portion of a distribution being excluded from gross income under paragraph (1) shall be treated as a rollover contribution described in Code section 408(d)(3).

Section 402(c)(9) of the Code provides, generally, that if a distribution attributable to an employee is paid to the spouse of the employee after the employee's death, section 402(c) will apply to such distribution in the same manner as if the spouse were the employee.

Section 1.402(c)-2 of the Income Tax Regulations, Question and Answer 12, provides, generally, that if a 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.

With respect to your ruling request, generally, if either a decedent's plan or IRA proceeds pass through a third party, e.g., 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, generally, said surviving spouse will not be eligible to roll over either the qualified plan or the IRA proceeds into his/her IRA.

However, in the present case, State F law and the provisions of Trust C give you, as sole Trustee of Trust C and Sub-Trust D, created under its terms, authority to determine which Trust C assets may be allocated to Sub-Trust D and how much of the assets you may pay to yourself as sole beneficiary of Sub-Trust D. Consistent with such grant of authority, you, as Trustee of Trust C and of Sub-Trust D, intend to request a distribution of Decedent A's Plan X balance be made to Trust C; then allocate the amounts distributed to Sub-Trust D, then terminate said Sub-Trust D, and then pay yourself, as beneficiary of Sub-Trust D, the full amount distributed from Plan X. Upon receipt, you, as beneficiary, intend to accomplish a timely rollover of the distribution into an IRA that will be set up in your name. Under this set of circumstances, all action taken with respect to both the Plan X distribution and the subsequent rollover into an IRA will be in accordance with the laws of State F and the terms of Trust C and will be accomplished by you either as trustee of Trust C and the sub-trusts created under its terms or as the beneficiary of Sub-Trust D.

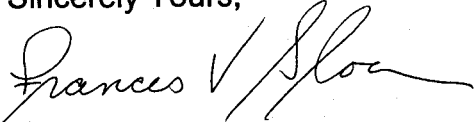
Under this set of circumstances, we will not apply the general rule set forth above. Therefore, we conclude that the distribution to you from Plan X through Sub-Trust D of Trust C and subsequent rollover into an IRA set up and maintained in your name will constitute a valid rollover as long as the rollover is timely accomplished. Furthermore, if the Plan X distribution is timely rolled over into an IRA, no part of such distribution will be included in your gross income in the year of distribution and year of rollover (2006).

This ruling 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 by others as precedent

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

If you have any questions, please call ***** (ID **-****) at (**) **-**** (not a toll free number).

Sincerely Yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

- Notice of Intention to Disclose
- Deleted Copy of Ruling

CC: