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

200211054

TAX EXEMPT AND
GOVERNMENT ENTITIES
402:08-05

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DEC 19 2001

T:EP:RA:T2

Legend:
Taxpayer A = **********
Taxpayer B = **********
Plan Y = **********
IRA X = **********
IRA Y = **********
IRA Z = **********
Employer M = **********
Company P = **********
Amount 1 = **********
Court C = **********
State E = **********

Dear **********

This letter is in response to a ruling request dated April 23, 2001, submitted on your behalf by your authorized representative in which you request a private letter ruling under section 402 of the Internal Revenue Code.

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

Taxpayer A, a resident of State E, whose date of birth was April 1, 1939, died intestate on November 19, 1999. Taxpayer A was survived by her husband, Taxpayer B. At the time of her death, Taxpayer A had not attained the age of 70 1/2.

At the time of her death, Taxpayer A was employed by Employer M and a participant in Plan Y. You represent that Plan Y, a pension plan, is qualified under section 401(a) of the Code and its trust tax exempt under section 501(a) . Taxpayer A did not complete a beneficiary designation of her Plan Y benefits prior to her death. On March 9, 2000, Employer M issued a check payable to Taxpayer A representing her interest in Plan Y.

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Taxpayer B endorsed the check "pay to the order of Taxpayer A-Deceased, Taxpayer B, Personal Representative".

On April 10, 2000, Taxpayer B was appointed personal representative of Taxpayer A's estate by Court C in accordance with the laws of State E. On April 19, 2000, Taxpayer B established six money market accounts with Company P. On May 4, 2000, within 60 days after the Plan Y distribution was received by Taxpayer A's estate, Taxpayer B established IRA X, IRA Y, and IRA Z in his own name with Company P and transferred the Plan Y distribution to said IRAs. The value of IRA X, IRA Y, and IRA Z equals Amount 1.

Based on the above facts and representations, Taxpayer B requests a ruling that the distribution from Plan Y to Taxpayer B, as personal representative of the estate of Taxpayer A, and as the sole beneficiary of her estate, constituted an eligible rollover distribution for federal income tax purposes in the year it was distributed from Plan Y to Taxpayer B and subsequently transferred to IRAs X, Y and Z and as such is not includible in the income of Taxpayer B in the year in which such amount was distributed and transferred.

With respect to your ruling request, 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 a 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 defined "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--

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(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

(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)(5) of the Code provides that a transfer to an eligible retirement plan described in clause (i) or (ii) of paragraph (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 section 408(d)(3).

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 it if 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 not be eligible to roll over the qualified plan proceeds into his/her own IRA.

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In this case, Taxpayer A's estate is the beneficiary of Taxpayer A's interest in Plan Y. Pursuant to Court C, Taxpayer B was appointed the personal representative of Taxpayer A's estate. In addition, you represent that pursuant to State E laws, Taxpayer B is the sole beneficiary of Taxpayer A's estate. As personal representative and sole beneficiary of Taxpayer A's estate, Taxpayer B has the authority to dispose of the assets of Taxpayer A's estate. Therefore, in view of Taxpayer B's appointment as personal representative under the provisions of the laws of State E, and in view of his status as sole beneficiary of Taxpayer A's estate, in accordance with the laws of State E, 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 Amount 1 from Taxpayer A and not from Taxpayer A's estate.

Taxpayer B, as personal representative and sole beneficiary of Taxpayer A's estate, exercised his right as beneficiary of Amount 1 by establishing IRA X, IRA Y, and IRA Z in his name with Company P within 60 days after the date the Plan Y distribution was received by Taxpayer A's estate, and transferring Amount 1 to said IRAs.

The foregoing references would permit Taxpayer B, a surviving spouse, to treat the distribution from Plan Y as an eligible rollover distribution. Information submitted with your ruling request indicate that the Plan Y distribution (Amount 1) was the only distribution made from Taxpayer A's Plan Y account to Taxpayer A's estate. Taxpayer A had not attained age 70 1/2 at the time of her death, and would not have attained such age by the end of the calendar year 2001. Thus, said distribution in not ineligible to be treated as an eligible rollover distribution under section 402(c)(4)(A) of the Code.

Therefore, with respect to your ruling request, we conclude that Taxpayer B was eligible to roll over the distribution of the proceeds of Taxpayer A's Plan Y account into IRA X, IRA Y, and IRA Z, all of which were set up and established by Taxpayer B in his own name within 60 days after the Plan Y distribution was made to Taxpayer A's estate. Since we have concluded that Taxpayer B was eligible to roll over the distribution from Plan Y to IRAs established and maintained by him in his own name within the time frame specified in section 402(c)(3) of the Code, we also conclude that such rolled over amounts will not be includible in Taxpayer B's gross income in the year in which such amounts were received by Taxpayer A's estate and transferred to IRAs X, Y and Z (calendar year 2000).

This ruling letter assumes that Plan Y was qualified under section 401(a) of the Code at the time the distribution was made to Taxpayer A's estate. Further, this ruling is also based on the assumption that the IRAs established and maintained by Taxpayer B in his own name meet the requirements of section 408 of the Code.

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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 **********, T:EP:RA:T2, at (202) 283-9605.

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

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