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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

OCT 21 2002

T:EP:RA:UK

UIL No: 401.10-04

Legend

Taxpayer A
Spouse B
Plan X
State Y

Dear ;

This is in response to your letter dated August 26, 2002, submitted by your personal representative, in which you request a ruling that a security interest pursuant to a Martial Settlement Agreement between you and your spouse is an assignment permitted under section 401(a)(13)(B) of the Code.

Taxpayer A and Spouse B are in the process of completing a divorce in State Y. Pursuant to the Martial Settlement Agreement incorporated into the Judgment for Dissolution of Marriage between Taxpayer A and Spouse B, the following transactions are to occur:

1. The sum of $ from Taxpayer's A account in Plan X will be transferred to Spouse B as her sole and separate property to be distributed and rolled over into an individual retirement account pursuant to a QDRO. The QDRO was entered on .

2. The balance of Taxpayer A's account in the Plan is to be Taxpayer A's sole and separate property.

3. Spouse B is to receive a security interest in Taxpayer A's remaining interest in Plan X to secure Taxpayer A's obligation to Spouse B under the Judgment for Dissolution of Marriage between Taxpayer A and Spouse B.

4. The assignment of the security interest in paragraph (3) above will occur pursuant to a second QDRO not yet drafted.

Plan X received a favorable determination letter from the Internal Revenue Service dated July 22, 1998 on its status as a qualified plan under section 401(a) of the Code.

Based on the above facts and representations, your authorized representative has requested a ruling that the creation of the security interest (as described in paragraph (3) above is an assignment permitted pursuant to section 401(a)(13)(B) of the Code.

Section 401(a)(13)(A) of the Code provides in general that a trust shall not constitute a qualified trust unless the plan of which the trust is a part provides that benefits provided under the plan may not be assigned or alienated.

However, Code section 401(a)(13)(B) provides a special rule for QDROs. Code section 401(a)(13)(B) provides that subparagraph (A) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a domestic relations order, except that subparagraph (A) shall not apply if the order is determined to be a QDRO.

Under section 1.401(a)-13(c)(1)(ii) of the Income Tax Regulations, the term "assignment" includes any direct or indirect arrangement (whether revocable or irrevocable) whereby a party acquires from a participant or beneficiary a right or interest enforceable against the plan in, or to, all or any part of a plan benefit payment which is, or may become, payable to the participant or beneficiary.

Section 1.401(a)(13)-1(g)(1) of the Regulations provides in relevant part that the term "QDRO" has the meaning set forth in section 414(p) of the Code.

Section 414(p)(1)(A) of the Code provides that, for purposes of section 414(p) and section 401(a)(13) of the Code, the term "QDRO" means a domestic relations order (i) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and (ii) with respect to which the requirements of paragraphs (2) and (3) are met.

Paragraph (2) of Code section 414(p) provides that the order must clearly specify certain facts. These facts include (A) the names and addresses of the participant and each alternative payee, (B) the amount or percentage, or manner of determining the amount or percentage, to be paid by the plan to each alternate payee, (C) the number of payments or period to which the order applies, and (D) each plan to which the order applies.

Paragraph (3) of Code section 414(p) provides that the order may not alter the amount, form, etc. of benefits under the plan. The order may not (A) require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan, (B) require a plan to provide increased benefits, or (C) require

payment of benefits to an alternate payee which are required to be paid to another alternate payee under another QDRO.

However, clause (A) of Code section 414(p)(3) is subject to an exception for certain payments made before a participant has separated from service, but after the participant has attained the earliest retirement age, as defined in Code section 414(p)(4). In addition, section 1.401(a)-13(g)(3) of the Regulations provides for a waiver of certain distribution requirements when a payment is made pursuant to a QDRO.

Under section 414(p)(1)(B) of the Code, the term "domestic relations order" means, in relevant part, any judgement which (i) relates to the provision of marital property rights to a spouse or former spouse of a participant, and (ii) is made pursuant to a State domestic relations law (including a community property law).

Code section 414(p)(8), in relevant part, defines "alternate payee" to include any spouse or former spouse of a plan participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the participant's plan benefit.

You have asked whether the security arrangement described in paragraph (3) above, in which a security interest is placed against Taxpayer A's remaining interest in Plan X in accordance with the terms of a QDRO, is an assignment permitted under section 401(a)(13)(B) of the Code.

Section 1.401(a)-13(c)(1)(ii) of the Regulations defines "assignment" broadly, to include any indirect arrangement whereby a party, such as Spouse B, acquires from a participant, such as Taxpayer A, a right enforceable against the plan in all or any part of a plan benefit payable to the participant. Accordingly, the security arrangement described in paragraph (3) above constitutes an assignment of the sort normally proscribed by Code section 401(a)(13)(A).

Code section 401(a)(13)(B), however, provides that an assignment normally proscribed by section 401(a)(13)(A) will be permitted, if the assignment is made pursuant to a domestic relations order which is determined to be a QDRO. Whether a domestic relations order is a QDRO is determined under section 414(p) of the Code.

The Martial Settlement Agreement that is part of the Judgment for Dissolution of Marriage is a domestic relations order which has assigned to an alternate payee, Spouse B, as security for her share in the martial property, a security interest in the remaining portion of the benefits payable under Plan X with respect to Taxpayer A, pursuant to a QDRO that is not yet drafted. You have represented that you will seek to enter, as the QDRO required by the Martial Settlement Agreement, an order, which incorporates inter alia the terms of the security

interest, described in paragraph (3). In order to be a QDRO, the order sought must also meet the requirements of paragraphs (2) and (3) of Code section 414(p). Thus, you represent that the order will be (1) a domestic relations order which assigns to an alternate payee a right to receive a portion of a participant's plan benefit, and (2) an order which meets the terms of paragraphs (2) and (3) of Code section 414(p).

Accordingly, the security interest described in paragraph (3) above constitutes an assignment which will be incorporated in a QDRO. Because it will be an assignment of a right pursuant to a QDRO, it will be an assignment that is permitted under Code section 401(a)(13)(B).

Accordingly, we rule that the creation of the security interest in Taxpayer A's interest in Plan X, as described in paragraph (3) above, will be an assignment permitted pursuant to Code section 401(a)(13)(B).

This ruling is premised on the assumption that the order incorporating the terms of paragraph (3) above will be determined to be a QDRO.

This ruling is further premised on the assumption that Plan X is qualified under Code section 401(a), and that the related trust is tax-exempt under Code section 501(a), at all times relevant to the transactions described above.

This ruling expresses no opinion regarding the qualified status of Plan X under Code section 401(a)(13)(B) upon the distribution of $ from the Plan to the Spouse B, pursuant to paragraph (1) above.

The original of this letter has been sent to your authorized representative in accordance with the power of attorney on file with this office.

If you or your authorized representative have any questions with regard to this letter, please contact

Sincerely yours,

Alan Pipkin
Employee Plans, Technical Group 4

Enclosures:

Deleted copy of letter ruling
Form 437