

200717023



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

FEB - 1 2007

UICs: 401.06-00
401.06-02
402.08-01

T: EP: RA: T1

LEGEND:

Decedent:

Taxpayer A:

Plan X:

IRA Y:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Date 8:

Month 1:

Month 2:

Company L:

Company M:

State U:

Dear :

This is in response to your request for letter ruling dated , submitted on your behalf by your authorized representative, as supplemented by correspondence received by the Internal Revenue Service during , on , on , and by an E-Mail dated , in which you ask for a series of letter rulings dealing with the consequences under section 401(a)(9) of the Internal Revenue Code of the below-described transaction. The following facts and representations support your ruling request.

Decedent, whose date of birth was Date 1, 1937, died on Date 2, 2005, a resident of State U not having attained age 70 ½. Decedent was not married at his death. Taxpayer A, who survived Decedent, and who was alive as of the date of this ruling request, was appointed the sole personal representative of Decedent's estate on or about Date 8, 2005.

During his life, Decedent was a participant in Plan X sponsored by Company L. Company L administers Plan X. On or about Date 3, 2004, Decedent named Taxpayer A the sole primary beneficiary of his interest in Plan X.

On or about Date 6, 2005, the shareholders and directors of Company L resolved to terminate Plan X effective Date 7, 2005. It has been represented that Plan X has been terminated and all assets in its related trust other than Decedent's interest have been distributed to affected Plan X participants. Said distributions occurred no later than the end of Month 2, 2005.

During Month 1, 2005, because of Plan X's planned termination, Decedent decided to roll over his interest in Plan X into IRA Y, an individual retirement account ("IRA") set up and maintained in his name with Company M. On Date 5, 2005, Decedent named Taxpayer A the sole beneficiary of his IRA Y. On Date 4, 2005, Decedent completed a Plan X "Termination Distribution Form" on which he selected the Direct Rollover Option and named IRA Y, maintained with Company M, as the eligible retirement plan to receive a distribution of his Plan X balance.

Decedent's date of death, Date 2, 2005, occurred 17 days after Date 4, 2005. The direct rollover of Decedent's Plan X account balance into IRA Y was not accomplished during said 17 day period and has not been accomplished either as of the date of this ruling request or as of the date of this ruling letter.

Sections 6.10 and 6.11 of Plan X contain language intending to comply with the requirements of Code section 401(a)(31) and the regulations promulgated thereunder. In relevant part, section 6.11 of Plan X provides that "...Information in connection with an "Eligible Rollover Distribution" shall include the right to have the funds transferred directly to another qualified plan or individual retirement account".

It has been represented that Plan X will be amended to comply with section 829 of the Pension Protection Act of 2006, Pub. L. 109-280 (PPA-2006), consistent with the guidance found in Notice 2007-7, 2007-5 I.R.B. 395, and that such Plan X amendment will not be given retroactive effect. Furthermore, the above-referenced transfer from Plan X to IRA Y will occur subsequent to the effective date of the Plan X amendment. Said Plan X amendment and transfer will occur no later than December 31, 2007.

It is contemplated that Company L, as Plan X administrator, will directly transfer, Decedent's interest in Plan X, except for the calendar year 2006 and calendar year 2007 Code section 401(a)(9) minimum required distribution (see below), into IRA Y (as re-titled). Said transfer will occur no later than December 31, 2007. Taxpayer A, the named beneficiary of Decedent's IRA Y, will then begin to receive minimum required distributions from said IRA Y with respect to the amounts directly transferred from Plan X calculated using her remaining single life expectancy beginning no later than December 31, 2008. It is also been represented that Taxpayer A began to receive minimum required distributions from said IRA Y with respect to amounts standing in IRA Y at Decedent's death no later than December 31, 2006.

It has been represented that a distribution in an amount sufficient to satisfy the requirements of Code section 401(a)(9) was made from Decedent's Plan X interest with respect to the 2006 calendar year.

It has also been represented that the IRA into which Decedent's Plan X interest will be transferred, IRA Y, will be re-titled as follows: "Taxpayer A as beneficiary of Decedent (deceased)".

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

1. That Taxpayer A, as the sole named beneficiary of Decedent's interest in Plan X and as the sole administratrix of his estate may directly transfer, by means of a trustee-to-trustee-transfer, Decedent's remaining interest in Plan X into the above referenced re-titled IRA Y,

with said transfer occurring no later than December 31, 2007. Said transfer is authorized by section 829 of the Pension Protection Act of 2006 ("PPA-2006");

2. That Taxpayer A may receive minimum required distributions from said re-titled IRA Y calculated using her remaining single life expectancy. With respect to amounts standing in IRA Y at Decedent's death, said required distributions must have begun no later than December 31, 2006. With respect to amounts directly rolled over from Plan X to IRA Y (re-titled) during calendar year 2007, said required distributions must begin no later than December 31, 2008;
3. That the re-titling of IRA Y, referenced above, is consistent with section 829 of the PPA-2006; and
4. That the re-titled IRA Y will constitute an inherited IRA as that term is used in section 829 of the PPA-2006. Furthermore, required distributions from the re-titled IRA Y must be made in accordance with the rules of Code section 401(a)(9)(B).

With respect to your ruling requests, section 401(a) of the Internal Revenue Code provides certain requirements applicable to qualified retirement plans. Code section 402 provides the rules governing the taxation of distributions received from the tax-qualified trust associated with a plan qualified within the meaning of Code section 401(a).

Section 402(a) of the Code provides that, except as otherwise provided in section 402, any amount actually paid or distributed from a trust described in section 401(a) which is tax exempt under section 501(a) shall be taxed to the distributee, in the taxable year of the distributee in which distributed, in the manner provided under 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 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)(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), 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 402(c)(3)(A) of the Code provides, generally, that, except as provided in subparagraph (B), section 402(c)(1) 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 829(a)(1) of the PPA-2006 provides that Code section 402(c) is amended by adding the following new paragraph:

- (11) Distribution to Inherited Individual Retirement Plan of Nonspouse Beneficiary—

(A) In General.—If, with respect to any portion of a distribution from an eligible retirement plan of a deceased employee, a direct trustee-to-trustee transfer is made to an individual retirement plan described in clause (i) or (ii) of paragraph (8)(B), established for the purposes of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined by section 401(a)(9)(E)) of the employee and who is not the surviving spouse of the employee—

- (i) the transfer shall be treated as an eligible rollover distribution for purposes of this subsection,
- (ii) the individual retirement plan shall be treated as an inherited retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)) for purposes of this title, and
- (iii) section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan.

(B) Certain trusts treated as beneficiaries—For purposes of this paragraph, to the extent provided in rules prescribed by the Secretary, a trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a trust designated beneficiary.

Section 829(b) of the PPA-2006 provides that the amendments made by this section shall apply to distributions after December 31, 2006.

Notice 2007-7 released on January 10, 2007, in Questions and Answers 11 to 19, provides guidance with respect to section 829 of the PPA-2006 and Code section 402(c)(11). In this regard, Q&A-15 of Notice 2007-7 provides that the direct rollover of a distribution by a nonspouse beneficiary is an eligible rollover distribution only for purposes of Code section 402(c). Accordingly, the distribution is not subject to the direct rollover requirements of Code section 401(a)(31). Q&A-15 also provides that if an amount distributed from a plan is received by a nonspouse beneficiary, the distribution is not eligible for rollover.

Q&A-19 of Notice 2007-7 provides, in pertinent part, that "...the rules for determining the required minimum distributions under the plan with respect to the nonspouse beneficiary also apply under the IRA...If the life expectancy rule applied to the nonspouse designated beneficiary under the plan, the required minimum distribution under the IRA must be determined using the same applicable distribution period as would have been used under the plan if the direct rollover had not occurred".

Section 408(d)(3)(C)(ii) defines "inherited IRA" as an IRA maintained for the benefit of an individual who acquired said IRA by reason of the death of another individual, in the case where said acquiring individual is not the surviving spouse of the deceased.

Code section 401(a)(9), in general, sets down the rules governing minimum required distributions from retirement plans qualified within the meaning of Code section 401(a). Code section 401(a)(9)(C)(i) provides, in short, that distributions to a qualified plan participant must begin no later than April 1 of the calendar year following the later of-(I) the calendar year in which the employee attains age 70 $\frac{1}{2}$, or (II) the calendar year in which the employee retires. Subclause (II) of clause (i) does not apply to a "5-percent owner" as that term is defined in Code section 416.

Section 408(a)(6) of the Code provides that, under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the IRA trust is maintained.

Code section 401(a)(9)(B)(ii) provides that, with respect to an employee/plan participant who dies prior to his "required beginning date", as that term is defined in Code section 401(a)(9)(C), distributions of that employee's entire interest under a plan must be made within 5 years of the employee's death.

Code section 401(a)(9)(B)(iii) provides an exception to the 5-year rule (above) with respect to distributions made to (or for the benefit of) a designated beneficiary as long as said distributions begin not later than 1 year after the death of the employee and as long as said distributions are made over the life of the beneficiary (or over a period not extending beyond the life expectancy of such beneficiary).

Section 401(a)(9)(E) of the Code provides that the term "designated beneficiary" means any individual designated as a beneficiary by the employee.

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

In addition, the "Final" Regulations have been modified in part (See 2004-26 I.R.B. 1082, 1098 (June 28, 2004)). The modification to the "Final" Regulations may also be relied upon with respect to required distributions for the 2003 and subsequent calendar years.

Section 1.401(a)(9)-3 of the "Final" Regulations, Q&A-3, provides, in relevant part, that in order to satisfy the exception in Code section 401(a)(9)(B)(iii) to the 5-year rule of Code section 401(a)(9)(B)(ii), with respect to a non-spouse beneficiary, distributions must begin no later than the end of the calendar year immediately following the calendar year of the employee's death.

Section 1.401(a)(9)-4 of the "Final" Regulations, Q&A-3, provides that only individuals may be designated beneficiaries for purposes of section 401(a)(9). A person who is not an individual, such as the employee's estate, may not be a designated beneficiary.

Section 1.401(a)(9)-4 of the "Final" Regulations, Q&A-4(a), provides that an individual must be a beneficiary as of the date of death of a plan participant in order to be treated as a designated beneficiary. Furthermore, in general, a plan participant's designated beneficiary will be determined based on the beneficiaries designated as of the date of death who remain beneficiaries as of September 30 of the calendar year following the calendar year of the employee's death.

Section 1.401(a)(9)-4 of the "Final" Regulations, Q&A-4(c), provides, in general, that for purposes of this A-4, an individual who is a beneficiary as of a plan participant's death but who dies prior to September 30 of the calendar year following the calendar year of the plan participant's death, is still to be treated as the designated beneficiary for purposes of computing minimum required distributions after the employee's (plan participant's) death.

Section 1.401(a)(9)-5 of the "Final" Regulations, Q&A-5(b), provides, in general, that if an employee dies prior to his required beginning date having designated a beneficiary, in order to satisfy the requirements of Code section 401(a)(9)(B)(iii), the applicable distribution period for distribution calendar years after the distribution calendar year containing the employee's date of death is the remaining life expectancy of the employee's designated beneficiary determined in accordance with either paragraph (c)(1) or paragraph (c)(2) of this A-5.

Section 1.401(a)(9)-5 of the "Final" Regulations, Q&A-5(c)(1), provides, in general, that, with respect to a non-spouse beneficiary, the applicable distribution period measured by the beneficiary's remaining life expectancy is determined using the beneficiary's age as of the beneficiary's birthday in the calendar year

immediately following the calendar year of the employee's death. In subsequent calendar years, the applicable distribution period is reduced by one for each calendar year that has elapsed after the calendar year immediately following the calendar year of death.

Section 1.401(a)(9)-9, of the "Final" regulations, Q&A-1, sets forth the "Single Life Table" used to compute the life expectancy of an individual.

With respect to your ruling requests, prior to his death, Decedent signed paperwork with Company L, the administrator of Plan X, intended to accomplish a direct rollover of his Plan X interest into IRA Y, a pre-existing IRA. Due to Decedent's death, Company L did not follow Decedent's instructions. However, during calendar year 2007, Decedent's Plan X account will be transferred, by means of a trustee-to-trustee transfer, into IRA Y re-titled to reflect Decedent's death and to reflect Taxpayer A's status as named beneficiary of said re-titled IRA Y. It has been represented that Taxpayer A will timely receive Code section 401(a)(9) required distributions based on her remaining life expectancy from said IRA Y.

Additionally, we note that if Company L does transfer Decedent's IRA X balance, less the calendar year 2006 and the calendar year 2007 minimum required distributions, into IRA Y, as represented, said IRA Y will be payable to Taxpayer A, Decedent's named (designated) beneficiary. Taxpayer A was Decedent's designated beneficiary, as that term is defined in Code section 401(a)(9), with respect to his Plan X interest, and she was named the beneficiary of IRA Y by Decedent prior to his death. Furthermore, Taxpayer A survived Decedent and was not married to Decedent at his death.

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

1. That Taxpayer A, as the sole named beneficiary of Decedent's interest in Plan X may transfer, by means of a trustee-to-trustee-transfer, Decedent's remaining interest in Plan X into the above referenced re-titled IRA Y, with said transfer occurring no later than December 31, 2007. Said transfer is authorized by section 829 of the PPA-2006;
2. That Taxpayer A may receive minimum required distributions from said re-titled IRA Y calculated using her remaining single life expectancy. With respect to amounts standing in IRA Y at Decedent's death, said required distributions must have begun no later than December 31, 2006. With respect to amounts directly rolled over from

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Plan X to IRA Y during calendar year 2007, said required distributions must begin no later than December 31, 2008;

3. That the re-titling of IRA Y, referenced above, is consistent with section 829 of the PPA-2006; and
4. That the re-titled IRA Y will constitute an inherited IRA as that term is used in section 829 of the PPA-2006. Furthermore, required distributions from the re-titled IRA Y must be made in accordance with the rules of Code section 401(a)(9)(B).

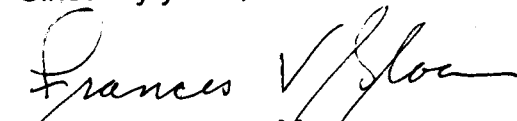
This ruling letter assumes that Plan X and the re-titled IRA Y either are, or will be, as represented, qualified within the meaning of Code section 401(a) and Code section 408(a), respectively, and will remain so qualified at all times relevant thereto. Additionally, it assumes the correctness of all facts and representations contained therein.

This letter is directed only to the taxpayer that requested it and is based solely on the representations made with respect thereto. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with the Service, a copy of this letter ruling is being sent to your authorized representative.

Any questions regarding this letter ruling should be addressed to
, Esquire (ID:) at (phone-not a toll-free
number) or (FAX).

Sincerely yours,


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

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose