PLR 9818055

Dear

*** This is in response to a letter dated October 16, 1997, submitted on your behalf by your authorized representative in which a ruling is requested concerning the rollover of certain proposed individual retirement annuity (IRA) distributions to Plan X.

Taxpayer A, who is 55 years old, worked for Company M in State B for many years. Company M sponsors Plan X which is intended to qualify under section 401(a) of the Internal Revenue Code. Taxpayer A was a fully vested participant in Plan X.

On May 1, 1997, Taxpayer A separated from service with Company M in order to join her spouse in State C where he just started working. Subsequent to her separation from service, the taxpayer requested that her benefits under Plan X ($78,385.52) be transferred to two separate IRAs in a direct rollover under section 402(c)(5) of the Code. On May 28, 1997, the direct rollovers were made to the IRAs in amounts of $67,500 and $10,885.52 respectively. The balance in the IRAs is and always has been exclusively attributable to the rollover amounts and any earnings on such amounts subsequent to the rollovers.

On July 1, 1997, Taxpayer A received the first of a series of monthly distributions from one of the IRAs in the amount of $460.25. This amount was intended to constitute part of a series of substantially equal periodic payments made for the life expectancy of the employee under section 72(t)(2)(A)(iv) of the Code, thereby qualifying as an exception to the 10 percent additional tax imposed on early distributions from qualified retirement plans by section 72(t)(1) of the Code.

Soon thereafter, Taxpayer A and her spouse returned to State B because her spouse's job in State C had not worked out as planned. Upon her return, Taxpayer A was asked to come back to work for Company M. Taxpayer A agreed. Taxpayer A resumed employment with Company M on July 10, 1997, and intends to remain as an employee of Company M for the foreseeable future.

Section 6.4(c)(1) of Plan X provides that a former participant who is reemployed by Company M before a 1-year break in service occurs shall continue to participate in the Plan. Section 4.9(a) of Plan X provides that transfers to Plan X from other qualified plans by employees are permitted. Amounts so transferred are set aside in a separate participant's rollover account.

Taxpayer A intends to transfer the balance in the IRAs, net of the amounts distributed to her monthly as part of a series of substantially equal periodic payments made for her life expectancy, to Plan X to be held in Plan X in a separate rollover account for her benefit.

Based on the aforementioned facts and representations, you have asked for rulings:

(1) That if Taxpayer A transfers the balance in the IRAs, less the amounts distributed as part of a series of substantially equal periodic payments, to Plan X, the amount transferred will not be taxable to Taxpayer A because of the transfer.

(2) That the proposed transfer will not subject Taxpayer A to liability for the 10 percent additional tax imposed on early distributions from qualified retirement plans under section 72(t) of the Code.

Section 408(d)(1) of the Code provides that, except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be.

Section 408(d)(3)(A)(ii) of the Code provides, in part, that an IRA distribution is not taxable at the time it is distributed if no part of the value of the annuity is attributable to any source other than a rollover contribution (as defined in section 402) from an employee's trust described in section 401(a) which is exempt from tax under section 501(a) and the entire amount received is paid (for the benefit of such individual) into another such trust not later than the 60th day on which the individual receives the payment or the distribution.

Taxpayer A represents that the IRAs in question have never contained assets other than those derived from amounts rolled over from Plan X. Thus, the IRAs meet the requirement of section 408(d)(3)(A)(ii) that no part of the value of the IRAs is attributable to any source other than a rollover contribution from a plan qualified under section 401(a) of the Code. In addition, Plan X is a qualified plan that provides for the establishment of a rollover account to receive and hold assets that are attributable to other qualified plans. Accordingly, so long as the receipt of such assets is consistent with the terms of Plan X and the assets are received in a transaction that otherwise meets the requirements of section 408(d)(3)(A)(ii), the taxability of such assets will be deferred until distributed from Plan X.

With regard to ruling request one we conclude:

(1) That if Taxpayer A transfers the balance in the IRAs, less the amounts distributed as part of a series of substantially equal periodic payments, to Plan X, the amount transferred will not be taxable to Taxpayer A because of the transfer.

Section 72(t) of the Code imposes an additional tax on premature distributions from qualified plans, including IRAs. The tax is equal to ten percent of the amount of the premature distribution that must be included in gross income. Section 72(t)(2)(A)(iv) of the Code provides and exception to the tax in the case of payments that are part of a series of substantially equal periodic payments made for the life or the life expectancy of the IRA beneficiary.

Section 72(t)(4) provides that the exception does not apply if the payments are subsequently modified (other than by reason of death or disability) (1) before the close of the 5-year period beginning with the date of the first payment and after the employee attains age 59 1/2, or (2) before the employee attains age 59 1/2. The taxpayer's tax for the first taxable year in which such modification occurs is increased by an amount equal to the tax which would have been imposed but for the exception, plus interest for the deferral period.

In accordance with the exception provided under section 72(t)(2)(A)(iv) of the Code, Taxpayer A commenced receiving substantially equal monthly payments on July 1, 1997. Taxpayer A proposes to modify those payments this year by terminating them and rolling over the remaining balance to Plan X. Thus, the exception is not applicable to the monthly payments previously received by Taxpayer A. In accordance with section 72(t)(4) of the Code, Taxpayer A's monthly payments are subject to the additional tax.
With regard to ruling request two, we conclude:

(1) That the proposed termination of the IRA distributions and transfer of the remaining balances in the IRAs will cause the above described early distributions to Taxpayer A to be subject to the 10 percent additional tax imposed under section 72(t) of the Code.

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