

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:EEE:EB:QP3
PLR-113510-19

Date:
January 31, 2020

In Re: Private Letter Ruling

Will =
Trust =
Decedent =
Taxpayer =
Ex-Spouse =
Employer H =
Plan 1 =
Plan 2 =

Amount 1 =
Amount 2 =
State J =
IRA =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =

Dear :

This letter responds to your request dated May 23, 2019, as supplemented by additional correspondence, in which several rulings are requested under section 402(c) of the Internal Revenue Code.

The following facts and representations have been submitted under penalties of perjury in support of the requested rulings.

On Date 1, Decedent executed his will, Will, and restated trust, Trust (originally established on Date 2). Trust is a revocable living trust which became irrevocable upon Decedent's death. On Date 4, Decedent died prior to attaining age 70 ½ and was survived by his widow, Taxpayer. At the time of his death, Decedent was employed by Employer and participated in Plan 1, a defined contribution retirement plan qualified under section 401(a), and Plan 2, an annuity plan described under section 403(b).

Taxpayer was married to Decedent at his death. As the executor of Decedent's estate, the sole trustee of Trust, and the sole beneficiary of Trust, Taxpayer submitted the requested rulings.

Section 2.01 of Will provides that upon Decedent's death, after payment of taxes and expenses, all of his probate estate shall be given to the trustee of Trust and directs the trustee to administer the property according to Trust and any amendments made prior to Decedent's death. Section 3.01 of Will names Taxpayer as Decedent's executor. Section 4.01 of Will grants the executor broad powers to administer Decedent's estate and any trust established under Will. Section 4.02 grants the executor all powers provided by Will, common law, and relevant law of State J.

Article 1 of Trust names Taxpayer as Decedent's trustee. Article 5, section 1.01, of Trust provides that Trust becomes irrevocable upon Decedent's death. Article 5, section 5.05, of Trust provides that after September 30 of the calendar year following Decedent's death, the trustee may not distribute any retirement plan for the benefit of Decedent's estate for any entity other than an individual. Article 7 of Trust provides that if Decedent's wife survives him, any remaining trust property will be distributed to her outright and free of trust. Article 11 of Trust governs Decedent's intentions for his retirement plans. Article 11, Section 11.01(b), of Trust provides that the trustee of Trust may cause the plan or part of the retirement plans to be transferred directly into another retirement plan in his wife's name, without the intervening step of transferring it to Trust. Section 13 of Trust grants broad powers to the trustee of Trust.

Section 2.04 of Plan 1 provides: 1) that upon commencing participation a plan participant shall designate a Beneficiary on Forms provided by the plan administrator or its designee; 2) from time to time, the plan participant may change his or beneficiary by written notice to the plan administrator or the plan administrator's designee; 3) if no designated beneficiary exists at the date of death of the plan participant, or if the plan participant has revoked a prior designation filed in writing with the plan administrator or designee without having filed a new designation, then any death benefits that would have been payable to the beneficiary shall be payable to the plan participant's spouse, if living; if not living, equal parts to each of the beneficiary's children; or if none survive, to beneficiary's estate.

Section 9.2 of Plan 2 provides that it is a governmental plan that is exempt from Title I of the Employee Retirement Income Security Act of 1974. Section 11.3 of Plan 2 provides that if a judgment decree or order that relates to marital property rights of a spouse or former spouse is made pursuant to the domestic relations laws of any state, then the amount in the participant's account balance shall be paid in the manner and to the person or persons so directed in the domestic relations order.

Decedent had named Ex-Spouse as beneficiary of Plan 1 and Plan 2. Decedent and Ex-Spouse divorced. On Date 5, a qualified domestic relations order (QDRO) from a State J court was communicated to the plan administrator that Decedent and Ex-Spouse divorced, ordered that assets in Plan 1 and Plan 2 be divided, and communicated how the assets should be divided, as marital property, during the relevant time-period described in the QDRO.

The QDRO additionally provided that as of the date that the plan administrators receive the QDRO, all of the plan benefits otherwise payable to Ex-Spouse as beneficiary are payable to the estate of Decedent and that Decedent retained the right to change the designation during his life. Decedent never changed the beneficiary designation.

Taxpayer represents that under the laws of State J, the beneficiary of Plan 1 is Decedent's estate. Taxpayer further represents that a State J QDRO provided for the division of Plan 1 assets between Decedent and Ex-Spouse. Taxpayer represents that under the laws of State J, the beneficiary of Plan 2 is the Decedent's estate.

Additionally, Taxpayer has established an individual retirement plan, IRA, as described in section 408(a) or 408(b), for the purpose of receiving rollover distributions from the account of Plan 1 and Plan 2. Taxpayer proposes to roll over Amount 1 from Plan 1 and Amount 2 from Plan 2 directly to her IRA rollover account.

As of the date of Decedent's death, Date 4, Plan 1 had a value of Amount 1 and Plan 2 had a value of Amount 2.

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

1. Taxpayer will be treated as acquiring Amount 1 from Plan 1 and Amount 2 from Plan 2 directly from Decedent, not from Trust.
2. Taxpayer is eligible to roll over the distributions from Plan 1 and Plan 2 to an IRA established in her own name pursuant to section 402(c)(9), provided that the rollover occurs no later than the sixtieth day following the day that Amount 1 is distributed from Plan 1 and Amount 2 is distributed from Plan 2.
3. Taxpayer will not be required to include in her income for federal tax purposes the distributions from Plan 1 and Plan 2 in the year of the distributions.

Section 402(c)(1) provides, generally, that if any portion of an eligible rollover distribution from a section 401(a) 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) provides that the maximum amount transferred 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)). The preceding sentence shall not apply to such distribution to the extent—

(A) such portion is transferred in a direct trustee-to-trustee transfer to a qualified trust or to an annuity contract described in section 403(b) and such trust or contract provides for separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

(B) such portion is transferred to an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B).

In the case of a transfer described in subparagraph (A) or (B), the amount transferred shall be treated as consisting first of the portion of such distribution that is includible in gross income (determined without regard to paragraph (1)).

Section 402(c)(3) provides that 402(c)(2) shall not apply to any transfer of a distribution made after the sixtieth day following the day on which the distributee received the property distributed. The Secretary may waive the 60-day requirement under subparagraph (A) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

Section 402(c)(4) defines an 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 that such term shall not include—

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 specified period of 10 years or more,

(B) any distribution to the extent such distribution is required under section 401(a)(9), and

(C) any distribution which is made upon hardship of the employee.

Section 402(c)(8)(B) defines an 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 trust qualified under section 401(a), (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)(9) provides that if any 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.

In this case, Decedent's estate is the beneficiary of Decedent's interests in Plan 1 and Plan 2. Taxpayer is Decedent's surviving spouse. As the sole executor of all of Decedent's estate, Taxpayer has the authority to dispose of the assets of Decedent's estate. Decedent's Will provided that all assets will pour over to Trust after payment of Decedent's final expenses. Taxpayer is sole trustee of Trust which became irrevocable on Decedent's death. Under the terms of Trust, the trustee shall distribute all remaining Trust property to Taxpayer free and clear of trust if Taxpayer survives Decedent. As trustee of Trust, Taxpayer will direct that all assets of Plan 1 and Plan 2 will be paid to Taxpayer. Taxpayer intends to roll over these amounts to IRA within 60 days of distribution from Trust. Under these circumstances, because the distributions attributable to the Decedent under Plan 1 and 2 are being paid to his spouse, section 402(c) applies to the distributions in the same manner as if the spouse were the Decedent. Therefore, the distributions may be treated as paid from each plan to Taxpayer for purposes of section 402(c).

Accordingly, we conclude that:

1. Taxpayer will be treated as acquiring Amount 1 from Plan 1 and Amount 2 from Plan 2 directly from Plan 1 and Plan 2 for purposes of section 402(c).
2. Taxpayer will be eligible to roll over the distributions from Plan 1 and Plan 2 to an IRA established in her own name pursuant to section 402(c)(9), provided that each rollover occurs no later than the sixtieth day following the day that Amounts 1 and 2 are distributed from Plans 1 and 2 respectively.
3. Taxpayer will not be required to include Amount 1 and Amount 2 in her gross income for federal tax purposes for the calendar year in which the distributions and rollovers occur, provided that each rollover occurs no later than the sixtieth day following the day that Amounts 1 and 2 are distributed Plans 1 and 2 respectively.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2020-1, 2020-1 I.R.B. 1, § 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2020-1, § 11.05.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

John T. Ricotta
Branch Chief
Qualified Plans, Branch 3
Employee Benefits, Exempt Organizations and
Employment Taxes

cc: