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Person To Contact:

Telephone Number:

Refer Reply To:  
CC:EE:EB:QP2  
PLR-109130-24

Date:  
September 24, 2024

Taxpayer A =  
Taxpayer B =  
Employer =  
Retirement Annuity 1 =  
Retirement Annuity 2 =  
Retirement Annuity 3 =  
Custodian =  
  
Trust 1 =  
Trust 2 =  
  
Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =  
Date 5 =  
Date 6 =

Dear :

This is in response to your letter dated May 2, 2024, (submitted on your behalf by your authorized representative), in which you request rulings 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.

Taxpayer A, whose date of birth was Date 1, died at age 73 on Date 2, survived by Taxpayer B, his spouse.

Taxpayer A was the participant in the following qualified retirement annuities sponsored by Employer: Retirement Annuity 1; Retirement Annuity 2; and Retirement Annuity 3 (together, the Retirement Annuities). The plan administrator and/or custodian of the Retirement Annuities was and is Custodian. The Retirement Annuities are annuity contracts under section 403(b).

On or about Date 3, Taxpayer A and Taxpayer B executed Trust 1. On or about Date 4, Taxpayer A designated Trust 1 as the primary beneficiary of the Retirement Annuities.

On or about Date 5, Custodian provided the Taxpayer with a letter and certain enclosures, including a trust certification form. On or about Date 6, Custodian provided Taxpayer with a second letter and certain enclosures, including a trust certification form.

Trust 1 is a joint, revocable, grantor trust. It had two grantors, Taxpayer A and Taxpayer B (the Grantors). Trust 1 was revocable by both of the Grantors, or either of the Grantors, during the joint lives of the Grantors. After the death of Taxpayer A, Trust 1 continued to be revocable by Taxpayer B during Taxpayer B's lifetime. Trust 1 was a grantor trust for federal income tax purposes on the date of its creation and is currently a grantor trust for federal income tax purposes.

Taxpayer A and Taxpayer B were the co-trustees of Trust 1 during the joint lifetimes of the Taxpayer A and Taxpayer B. Upon the death of the Taxpayer A, Taxpayer B became the sole trustee of Trust 1. Taxpayer A and Taxpayer B were the only two beneficiaries of Trust 1 during the joint lifetimes of Taxpayer A and Taxpayer B. Upon the death of Taxpayer A, Taxpayer B became the sole beneficiary of Trust 1.

Any and all assets held by Trust 1 prior to the death of Taxpayer A continue to be held by Trust 1 for the benefit of Taxpayer B. Any and all assets received by Trust 1 after the death of the Taxpayer A also will be held by Trust 1 for the benefit of Taxpayer B.

Taxpayer B is the surviving sole beneficiary of Trust 1. Taxpayer B has the exclusive right to the use and benefit of all of the assets held by Trust 1, including any assets received from the Retirement Annuities. As the surviving sole spouse beneficiary, Taxpayer B has the absolute right to direct the trustee to make distributions to Taxpayer B of part or all of the assets of Trust 1 for any reason. Trust 1 provides for the right by Taxpayer B to disclaim all or part of the assets of Trust 1. Taxpayer B has not, and does not intend to, exercise Taxpayer B's right to make such a disclaimer.

Trust 1 provides for the funding of Trust 2 upon the second to die of Taxpayer A and Taxpayer B. Trust 2 is not effective and is not in existence since Taxpayer B is still surviving.

Custodian intends to make a single lump sum distribution of all amounts in the Retirement Annuities to Taxpayer B, in Taxpayer B's capacity as trustee of Trust 1.

Taxpayer B, in Taxpayer B's capacity as sole trustee of Trust 1 and sole lifetime beneficiary of Trust 1, intends to make a demand for distribution or payment to Taxpayer B of all amounts in the Retirement Annuities. After receipt, Taxpayer B intends to rollover the distributions from the Retirement Annuities into one or more individual retirement arrangements (IRAs). Taxpayer B intends to make such rollovers no later than the 60th day following the date on which the distributions are made from the Retirement Annuities to Taxpayer B.

In the alternative, and as a matter of convenience, Taxpayer B, in Taxpayer B's capacity as sole trustee of Trust 1 and as sole lifetime beneficiary of Trust 1, may direct Custodian to make a direct transfer from the Retirement Annuities to Taxpayer B's IRA(s).

The amount necessary to satisfy the minimum distribution rules of section 401(a)(9), if any, will not be rolled over or transferred into the Taxpayer's IRA(s).

#### Rulings Requested

Based on the facts and representations, the following rulings were requested:

1. Taxpayer B is eligible to transfer Taxpayer A's interests in the Retirement Annuities into one or more IRAs established and maintained in the name of Taxpayer B. This can be accomplished either (1) by rolling over the distributions of Taxpayer A's interests in the Retirement Annuities into one or more IRAs established and maintained in the name of Taxpayer B, pursuant to section 403(b), if the rollover occurs no later than the sixtieth day following the day the Retirement Annuities are received by Taxpayer B in Taxpayer B's capacity as trustee of Trust 1, or (2) by a direct transfer by Taxpayer B into one or more IRA(s) established and maintained in the name of Taxpayer B.
2. Taxpayer B is not required to include the above referenced distribution in Taxpayer B's income for federal tax purposes in the year of such distribution.

#### Law and Analysis

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 qualified trust, (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.

Section 403(b)(8)(A) provides that, if—(i) any portion of the balance to the credit of an employee in an annuity contract described in 403(b)(1) is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)), (ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan described in section 402(c)(8)(B), and (iii) in the case of a distribution of property other than money, the property so transferred consists of the property distributed, then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 403(b)(8)(B) provides that the rules of section 402(c)(2)-(7), (9), and (11), as well as section 402(f), apply for purposes of section 403(b)(8)(A), except that section 402(f) shall be applied to the payor in lieu of the plan administrator.

In this case, Trust 1 is the primary beneficiary of Taxpayer A's interests in the Retirement Annuities. Taxpayer B is Taxpayer A's surviving spouse. As the sole surviving trustee and sole surviving spouse beneficiary of Trust 1, Taxpayer B has the exclusive right to the use and benefit of all of the assets of Trust 1, including any assets received from the Retirement Annuities. As trustee of Trust 1, Taxpayer B will direct that all assets of the Retirement Annuities will be paid to Taxpayer B. Under these circumstances, because the distributions attributable to Taxpayer A under the Retirement Annuities 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 being paid from each of the Retirement Annuities to Taxpayer B for purposes of section 402(c).

### Rulings

Therefore, with respect to your ruling requests, we conclude that:

1. Taxpayer B is eligible to transfer Taxpayer A's interests in the Retirement Annuities into one or more IRAs established and maintained in the name of Taxpayer B. This can be accomplished either (1) by rolling over the distributions of Taxpayer A's interests in the Retirement Annuities into one or more IRAs established and maintained in the name of Taxpayer B, pursuant to section 403(b), if the rollover occurs no later than the sixtieth day following the day the Retirement Annuities are received by Taxpayer B in Taxpayer B's capacity as trustee of Trust 1, or (2) by a direct transfer by Taxpayer B into one or more IRA(s) established and maintained in the name of Taxpayer B.

2. Taxpayer B is not required to include the above referenced distribution in Taxpayer B's income for federal tax purposes in the year of such distribution.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2024-1, 2024-1 IRB 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. 2024-1, § 11.05.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter ruling.

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.

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,

Jeremy Lamb  
Senior Counsel  
Qualified Plans, Branch 2  
Office of Associate Chief Counsel  
(Employee Benefits, Exempt Organizations, and  
Employment Taxes)

cc: