

Internal Revenue Service

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[REDACTED]

Department of the Treasury

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Person to Contact:

[REDACTED]
Telephone Number:
[REDACTED]

Refer Reply To:
CC:PSI:4\GENIN-146352-01
Date: **October 10/19/2001**

Dear [REDACTED]:

This is in response to your August 21, 2001 letter requesting information regarding the federal estate tax treatment of the survivor annuity payable under the military Survivor Benefit Plan (SBP). Your letter indicates that you previously submitted a similar request on December 5, 1997, and that you have misplaced our May 13, 1998 response to that request. As the relevant legal authority applicable to your situation has not changed since the date of our last letter we provide below the information that is contained in our May 13, 1998 correspondence.

Your letter indicates that you retired from the military in [REDACTED], after [REDACTED] years of service, and that you have been enrolled in the SBP and its predecessor plan since the plans were started. You have never made any deposits pursuant to § 1438 or 1452(d) of Title 10, United States Code. You have elected a survivorship annuity for your wife and disabled son. At one time, your older son was designated as a possible beneficiary of the plan, but you changed this designation. This is the only change you have made to the form of the benefits.

You request guidance as to whether the present value of the survivor annuity, at the date of your death, will be includible in your gross estate and, whether the present value of the survivor annuity, at the date of your spouse's death, will be includible in your spouse's gross estate. We cannot provide a ruling because your request does not satisfy the requirements for a ruling contained in Rev. Proc. 2001-1, 2001-1 I.R.B. 1, 20. Instead, we are able to provide you with the following general information.

Deceased Retiree's Gross Estate

Section 2039(a) of the Internal Revenue Code provides that a decedent's gross estate includes the value of an annuity or other payment receivable by a beneficiary by reason of surviving the decedent under any form of contract or agreement if the annuity or other payment was payable to the decedent for his or her life. Section 2039 also provides, in some instances, that pension benefits be excluded in whole or in part from the gross estate of decedents who die after 1984.

The following rules apply to estates of retirees who retired before January 1, 1983, and who were receiving benefits under the plan before January 1, 1983.

If the retiree had made an irrevocable election to the form of the benefits before January 1, 1983, or, in the alternative, did not change the form of the benefits after December 31, 1982, the entire present value of any survivor pension benefits is excludible from the retiree's gross estate (unless deposits were made pursuant to section 1438 or section 1452(d) of Title 10).

If the retiree had changed the form of the benefits after December 31, 1982, but before July 18, 1984, the total present value of survivor benefits from all plans that is excludible from the retiree's gross estate is limited to \$100,000. The value of total survivor annuities from pension plans in excess of \$100,000 is includible.

If the retiree changed the form of the benefits after July 17, 1984, the entire value of the survivor annuity is includible in the retiree's gross estate.

In your case, the estate tax treatment of the survivor annuity payable at your death will depend upon whether and when you changed the form of the benefits. This is a statutory requirement set forth in the Tax Reform Acts of 1984 and 1986.

Under § 525(b)(4) of the Tax Reform Act of 1984 (as amended by § 1852(e)(3) of the Tax Reform Act of 1986), the estates of decedents who were participants in a qualified plan and who were receiving benefits under that plan, but who had not made an irrevocable election as to the form of the retirement and survivor benefit before July 18, 1984, are treated as having made a timely irrevocable election if the decedent did not change the form of benefit before death.

The form of benefits of the SBP is provided under the terms of the plan. If the plan provides for more than one form of benefit, for purposes of § 2039, the form of benefit is the benefit elected by the retiree upon separation from service. A change in the form of benefit occurs if, after July 17, 1984, any person or persons alters the form or period of distribution under the plan, even though the change may be a right or option under the plan or allowable by statute. However, since the designation of the beneficiary under the plan does not have to be irrevocable in order for the election to be valid, the retiree may change the beneficiary without changing the form of the

benefit. Whether you altered the form or period of distribution under the SBP from the form and period that you elected upon retirement (without taking into account a change in the beneficiary), is a question of fact that cannot be resolved without a thorough review of the terms of the separate plans.

In summary, if you made an irrevocable election to the form of the benefits before January 1, 1983, or, if you did not change the form of the benefits after December 31, 1982, the entire present value at the date of your death of the survivor annuities from the plan are excludible from your gross estate. If you changed the form of benefit under the plan between January 1, 1983, and July 17, 1984, you may exclude up to a total of \$100,000 of the present value at the date of your death of the survivor annuities from the plan from your gross estate for federal estate tax purposes. Any excess will be includible in your gross estate. If you changed the form of the benefit under the plan after July 17, 1984, the entire value of the survivor's annuity under that plan will be includible in your gross estate.

Estate Tax Marital Deduction in Retiree's Estate

An estate tax marital deduction is allowed from the value of the gross estate of the retiree for the value of the survivor annuity if the value of the survivor annuity is included in the retiree's gross estate and the benefits are payable to the retiree's surviving spouse.

If a retiree elected to provide a survivor annuity to only the surviving spouse (with no survivor benefit to any other person), the retiree's estate qualifies for a marital deduction for the present value of the survivor annuity that passes to the surviving spouse and that is included in the decedent's-retiree's gross estate. The decedent's estate does not have to make any election to claim this marital deduction.

If a retiree elected to provide a survivor annuity that is paid first to the retiree-decedent's spouse and, upon the spouse's death, to other persons such as children, the present value of the survivor annuity will automatically qualify for the marital deduction in the retiree-decedent's estate as qualified terminable interest property (QTIP). The decedent's estate can elect not to treat the survivor annuity as QTIP property on the Schedule M of the federal estate tax return. If the survivor annuity is treated as QTIP property, the decedent's estate will get a marital deduction for the value of the survivor annuity on the date of the decedent's death, and the value of the survivor annuity on the date of death of the surviving spouse will be included in the surviving spouse's gross estate. If the survivor annuity is not treated as QTIP property, the decedent's estate will not get an estate tax marital deduction, and the value of the survivor annuity on the date of death of the surviving spouse will not be included in the surviving spouse's gross estate.

If a retiree elected to provide a survivor annuity only to eligible children, and the value of the survivor annuity on the date of the decedent-retiree's date of death is

includible in the retiree's gross estate, no estate tax marital deduction is available because no property passes to the surviving spouse.

Survivor Annuity Beneficiary's Gross Estate

Whether the value of the survivor benefits is includible in the surviving spouse's gross estate upon his/her death (after the retiree's death) depends upon whether the value of the survivor annuity was included in the gross estate of the retiree and whether a marital deduction for the value of the survivor annuity was allowed to the retiree's estate.

For the estate of the surviving spouse of a retiree who elected to provide a survivor annuity only to the spouse, upon the death of the surviving spouse (after the retiree's death), the value of the survivor benefits are not included in the spouse's gross estate, since the benefits cease upon the death the surviving spouse.

For the estate of the surviving spouse of a retiree who elected to provide a survivor annuity for the retiree's spouse and, upon that spouse's death, to a child or children, the present value of the survivor annuity which passes to the child or children at the spouse's date of death is includible in the spouse's gross estate if: the value of the survivor annuity was includible in the retiree's gross estate and the retiree's estate was allowed a QTIP marital deduction, as described above. If the value of the survivor annuity was not included in the retiree's gross estate or, if included, a QTIP marital deduction was not taken, the value of the survivor annuity is not includible in the surviving spouse's gross estate. In either event, the value of the survivor benefits is not includible in the gross estate of the child.

For the estate of the surviving spouse of a retiree who elected to provide a survivor annuity to only the eligible children, upon the death of the surviving spouse or the death of each child, the value of the survivor benefits will not be included in the gross estate of either the surviving spouse or any child.

The value of a survivor's annuity is calculated by using the following formula:
Annual Annuity Amount x Beneficiary's Annuity Factor x Monthly Adjustment Factor = Present Value of Survivor Annuity.

The beneficiary's annuity factor may be found in Table S of § 20.2031-7(d)(6) of the Estate Tax Regulations. Depending upon whether the survivor annuity is payable at the beginning or at the end of each payment interval, the monthly adjustment factor may be found in Table J or Table K, respectively, of the regulation. The determination of the proper factors in the Tables will depend upon the applicable federal rate, described in § 7520 of the Internal Revenue Code, for the month and year in which the retiree dies. The applicable federal rates are published monthly in the Internal Revenue Bulletin. An

explanation and example of the computation of a survivor's annuity is contained in § 20.2031-7(d)(2)(iv).

We hope that this information is helpful.

Sincerely,

Lorraine E. Gardner
Acting Senior Technician Reviewer
Office of Associate Chief Counsel
(Passthrough and Special Industries)