



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201417027

JAN 30 2014

Uniform Issue List: 9100.00-00

T:EP:RA:TI

LEGEND

Taxpayer A=

Taxpayer B=

Decedent C=

Plan D=

Plan E=

Amount 1 =

Dear :

This is in response to your , ruling request submitted on your behalf by your authorized representative, as supplemented by correspondence dated , concerning the application of section 301.9100-1 of the Procedure and Administration Regulations ("P&A Regulations") to extend the time period to begin distributions as required under section 401(a)(9)(B)(iii) of the Internal Revenue Code ("Code").

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

Taxpayer A and Taxpayer B are the daughters of Decedent C. Decedent C was the sole participant in Plan D, a profit sharing plan, and Plan E, a money purchase pension plan. Decedent C died on , prior to April 1 of the calendar year following the calendar year in which he attained age 70½ and prior to taking any

distributions from Plan D or Plan E ("Plans"). Taxpayer A and Taxpayer B are the designated beneficiaries of Decedent C's interest in Plan D and Plan E, and they were Decedent C's designated beneficiaries on the date of his death.

Taxpayer A and Taxpayer B represent that, due to circumstances beyond their control, the executor of Decedent C's estate did not notify them that they were the beneficiaries of Decedent C's interest in Plan D and Plan E until sometime after

Sections 9.1(a)(2), 9.1(b)(2)(ii) and 9.1(d)(2)(i) of Plan D require that distributions to non-spouse designated beneficiaries be made using the "life expectancy rule" and must begin by the December 31 of the calendar year immediately following the calendar year in which the participant died, unless otherwise elected under section 9.1(f) of Plan D.

Section 9.1(f) of Plan D allows non-spouse designated beneficiaries the option to delay the date benefits will commence by using the "5-year rule." Beneficiaries may elect on an individual basis whether the 5-year rule applies. The 5-year rule requires a participant's entire interest in the plan be distributed to the beneficiary by the December 31 of the calendar year containing the fifth anniversary of the participant's death.

Section 9.1(f) of Plan D requires a designated beneficiary to make an election to use the 5-year rule by the earlier of September 30 of the calendar year in which distribution would be required to begin under section 9.1(b)(2) of Plan D, or by the September 30 of the calendar year which contains the 5th anniversary of the participant's death. If no election is made to use the 5-year rule or the life expectancy rule, then Section 9.1(f)(1) of the Plan indicates that distributions will be made in accordance with life expectancy rule, which is the default rule under Plan D under Sections 9.1(b)(2)(ii) and 9.1(d)(2)(i).

With respect to Plan E, Article I, Paragraph GG.2 indicates that if the Participant dies before distributions begin and there is a Designated Beneficiary, distribution to the Designated Beneficiary is not required to begin by the date specified in subparagraph C.2(a) of Article VII of the Plan, but the Participant's entire interest will be distributed to the Designated Beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death. This section further provides that the modification to Paragraph C.2(a) of Article VII of the Plan E will apply to all distributions.

Article VII(C)(2)(a)(ii) of Plan E requires distributions by December 31 of the calendar year immediately following the calendar year in which the participant dies.

Article I, Paragraph GG.3 permits beneficiaries, on an individual basis, to elect whether the 5-year rule or the life expectancy rule applies to distributions after the death of a participant who has a designated beneficiary. An election must be made by the earlier of the September 30 of the calendar year in which distribution would be required to begin under Article VII(C)(2)(a)(ii) of the Plan, or by the September 30 of the calendar year which contains the fifth anniversary of the participant's death. If no election is made to use the 5-year rule or the life expectancy rule, Article I, Paragraph GG.3 of

Plan E indicates that distributions will be made in accordance with subparagraph C.2 of Article VII of Plan E, and, if applicable, the elections in Paragraph GG.2 of Article I.

In this case, under the terms of the Plans, because Decedent C died during calendar year , both Plan D and Plan E ("Plans") would have required benefits to commence under the life expectancy rule no later than , which is the December 31 of the calendar year immediately following the calendar year in which Decedent C died. Under the 5-year rule, Decedent C's entire interest in the Plans must be distributed no later than , the year containing the fifth anniversary of Decedent C's death.

If Taxpayer A and Taxpayer B were to have made an election as to which rule applied, the deadline for election under the Plans was , which is earlier of the September 30 of calendar year (the calendar year in which distribution would be required to begin under the life expectancy rules under the Plans), and the September 30 of the calendar year (the calendar year that contains the 5th anniversary of the Decedent C's death).

Taxpayer A and Taxpayer B represent that they did not learn of their status as designated beneficiaries until after , and they represent that they did not make an election to use the 5-year rule for Plan D or Plan E.

As of the date of the ruling request, Taxpayer A and Taxpayer B represent that they have received no distributions from Plan D. However, they each received one distribution from Plan E, in Amount 1, in . The Taxpayers represent that Amount 1 is the amount that would have been required if distributions from Plan E were made over the lifetime of the designated beneficiaries.

Based on the facts and representations, you request the rulings below:

- (1) That the time period to begin distributions to Taxpayer A, as a designated beneficiary of Decedent C's interest in the Plans, under section 401(a)(9)(B)(iii)(II) of the Code be extended by application of section 301.9100-1 of the P&A Regulations, because Taxpayer A did not become aware that she was a designated beneficiary of the Plans, and was not able to satisfy the requirements to obtain distributions under the Plans until after the time provided by section 401(a)(9)(B)(iii)(II) and by section 1.401(a)(9)-3, Q&A-3(a) of the Income Tax Regulations ("IT Regulations") for beginning such distributions had expired.
- (2) That the portion of Decedent C's interest in the Plans to be distributed to Taxpayer A will be distributed (in accordance with applicable IT Regulations) over the shorter of the life expectancy of Taxpayer A and Taxpayer B.
- (3) That due to factual circumstances that prevented the Plans from distributing the funds of the Plans prior to , to the extent it is determined that

the excise tax imposed by section 4974(a) of the Code applies to Taxpayer A as a designated beneficiary of the Plans, for failing to meet the minimum required distribution rules under section 401(a)(9) of the Code and section 1.401(a)(9)-1 of the IT Regulations for years , , and , a waiver of such tax is proper under section 4974(d) of the Code.

- (4) To the extent it is determined that any amount should have been distributed from the Plan D or Plan E during any of the tax years through , given Taxpayer A's circumstances and the circumstances preventing the distribution of the Plans' assets, Taxpayer A had reasonable cause for any resulting understatement or underpayment of tax and acted in good faith at all times with respect to such amounts and, as such, shall not be subject to any penalty under section 6662 of the Code for negligence or understatement of income tax relating to such distributions during such taxable years.
- (5) That the time period to begin distributions to Taxpayer B, as a designated beneficiary of Decedent C's interest in the Plans, under section 401(a)(9)(B)(iii)(II) of the Code be extended by application of section 301.9100-1 of the P&A Regulations, because Taxpayer B did not become aware that she was a designated beneficiary of the Plans, and was not able to satisfy the requirements to obtain distributions under the Plans until after the time provided by section 401(a)(9)(B)(iii)(II) and by section 1.401(a)(9)-3, Q&A-3(a) of the IT Regulations for beginning such distributions had expired.
- (6) That the portion of Decedent C's interest in the Plans to be distributed to Taxpayer B will be distributed (in accordance with applicable IT Regulations) over the shorter of the life expectancy of Taxpayer A and Taxpayer B.
- (7) That due to factual circumstances that prevented the Plans from distributing the funds of the Plans prior to , to the extent it is determined that the excise tax imposed by section 4974(a) of the Code applies to Taxpayer B as a designated beneficiary of the Plans, for failing to meet the minimum required distribution rules under section 401(a)(9) of the Code and section 1.401(a)(9)-1 of the IT Regulations for years , , and , a waiver of such tax is proper under section 4974(d) of the Code.
- (8) To the extent it is determined that any amount should have been distributed from Plan D or Plan E during any of the tax years through , given Taxpayer B's circumstances and the circumstances preventing the distribution of the Plans' assets, Taxpayer B had reasonable cause for any resulting understatement or underpayment of tax and acted in good faith at all times with respect to such amounts and, as such, shall not be subject to any penalty under section 6662 of the Code for negligence or understatement of income tax relating to such distributions during such taxable years.

Revenue Procedure 2014-4, 2014-1 I.R.B. 125 permits the Employee Plans Technical Office to issue letter rulings on Code sections involving employee plans matters. Section 6.02 of Rev. Proc. 2014-4 limits the jurisdiction of letter rulings to specific, enumerated sections of the Code.

Section 6.04 of Rev. Proc. 2014-4 permits the issuance of letter rulings regarding requests for an extension of time for making an election or other application for relief under section 301.9100-1 of the P&A Regulations.

Section 8.01 of Rev. Proc. 2014-4 provides that the Service will not issue a letter ruling in certain areas because of the factual nature of the problem involved or because of other reasons. The Service may decline to issue a letter ruling when appropriate in the interest of sound tax administration or on other grounds whenever warranted by the facts or circumstances of a particular case.

Section 301.9100-1(c) of the P&A Regulations provides that the Commissioner of the Internal Revenue Service has discretion to grant a taxpayer a reasonable extension of time of the time fixed by a regulation, a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin for the making of an election or application for relief in respect of tax under, among others, Subtitle A of the Code.

Section 401(a)(9)(A) of the Code provides that a trust shall not constitute a qualified trust under the Code unless the plan provides that the entire interest of each employee will be distributed not later than the required beginning date, or will be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of such employee or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary).

Section 401(a)(9)(B)(ii) of the Code requires that if an employee dies before the distribution of the employee's interest has begun, the entire interest of the employee will be distributed within 5 years after the employee's death ("5-year rule"). However, section 401(a)(9)(B)(iii) of the Code provides an exception if any portion of a deceased employee's interest is payable to or for the benefit of a designated beneficiary. The portion must be distributed beginning not later than one year after the death of the employee (or such later date that the Secretary may by regulations prescribe), over the life of such designated beneficiary (or over a period not exceeding the life expectancy of such beneficiary) ("life expectancy rule").

Section 1.401(a)(9)-1, Q&A-3(a) of the IT Regulations provides that a plan may include written provisions regarding any optional provisions governing plan distributions that do not conflict with section 401(a)(9) and the regulations thereunder.

Section 1.401(a)(9)-3, Q&A-3(a) provides, with respect to an employee who dies prior to his required beginning date, that distributions to a non-spouse beneficiary must

commence on or before the end of the calendar year immediately following the year in which the employee died.

Section 1.401(a)(9)-3, Q&A-4(b) provides that a plan may adopt a provision specifying either that the 5-year rule or the life expectancy rule will apply even if the employee has a designated beneficiary.

Section 1.401(a)(9)-3, Q&A-4(c) provides that a plan may adopt a provision that permits employees (or beneficiaries) to elect on an individual basis whether the 5-year rule or the life expectancy rule applies. An election must be made no later than the earlier of: 1) the end of the calendar year in which distribution would be required to commence in order to satisfy the requirements for the life expectancy rule, or 2) the end of the calendar year which contains the fifth anniversary of the date of death of the employee.

Section 1.401(a)(9)-5, Q&A-7(a) provides that if more than one individual is designated as a beneficiary with respect to an employee as of the applicable date for determining the designated beneficiary, the designated beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the applicable distribution period.

Section 4974(a) of the Code provides that if the amount distributed during the taxable year of the payee under any qualified retirement plan is less than the minimum required distribution for such taxable year, a tax equal to 50% of the amount by which such minimum required distribution exceeds the actual amount distributed during the taxable year is imposed and paid by the payee.

Section 4974(b) of the Code defines the term "minimum required distribution," in pertinent part, as the minimum amount required to be distributed during a taxable year under section 401(a)(9) of the Code.

Section 4974(d) of the Code provides, in pertinent part, that if the taxpayer establishes that the failure to distribute the minimum required distribution during any taxable year was due to reasonable error and reasonable steps are being taken to remedy the shortfall, the Secretary may waive the 50% excise tax imposed by section 4974(a) of the Code for the taxable year. A taxpayer may apply for a waiver by completing IRS Form 5329 and attaching it to his or her tax return.

Section 6662(a) of the Code imposes an additional 20% tax on the portion of the underpayment of tax to which section 6662 applies.

With respect to ruling requests one and five, we conclude that the time a non-spouse beneficiary must begin distributions under section 401(a)(9)(iii) of the Code cannot be extended by operation of section 301.9100 of the P&A Regulations. The time period to begin distributions is fixed by the Code and related IT Regulations. While the IT Regulations permit an election to determine which distribution rule applies (5-year rule or life expectancy rule) and includes a deadline by which an election must be made, the

election deadline simply provides a time by which beneficiaries must choose between the two rules; it does not change the date by which distributions must begin under either rule. Therefore, we hereby decline your request to extend the time period to begin distributions to Taxpayer A and Taxpayer B as designated beneficiary of the Plans. Taxpayer A and Taxpayer B must determine the extent to which any required minimum distributions were not made in accordance with section 401(a)(9)(iii) of the Code and the related IT Regulations.

Your second and sixth requested rulings ask for a determination that Decedent C's interest in the Plans be distributed over the shorter of the life expectancy of Taxpayer A or Taxpayer B. With respect to Plan D, Sections 9.1(f), 9.1(b)(2)(ii) and 9.1(d)(2) of Plan D provide that the life expectancy rule shall apply as the default rule, if no election is made between the life expectancy rule and the 5-year rule. Section 1.401(a)(9)-5, Q&A-7(a) of the IT Regulations requires that where there is more than one individual designated as a beneficiary, the designated beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the applicable distribution period. Consequently, we conclude that the portion of Decedent C's interest in Plan D to be distributed to Taxpayer A, as well as the portion of Decedent C's interest in Plan D to be distributed to Taxpayer B, will be distributed over the shorter of the life expectancy of Taxpayer A and Taxpayer B.

With respect to Plan E, the documentation provided would require a factual determination concerning plan qualification matters under section 401 of the Code. For example, the documentation provided indicates that the current version of Plan E was adopted on _____, which falls outside of the remedial amendment period pursuant to section 401(b) of the Code with respect to the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). Although Plan E attempts to use a retroactive amendment effective date of _____ for Plan E, the documents provided do not indicate whether the prior version of Plan E, which was adopted on _____, was timely amended within the EGTRRA remedial amendment period. Rev. Proc. 2014-4 provides that the Service may decline to issue letter rulings, because of the factual nature of the issues involved or because of other reasons. Therefore, based on the above, we decline to rule with respect to Plan E and ruling requests (2) and (6).

With respect to your third and seventh requested rulings, because the deadline to commence benefits cannot be extended, to the extent that it is determined that Taxpayer A and Taxpayer B failed to take minimum required distributions from a qualified plan under section 401(a) of the Code, the 50% excise tax under section 4974(a) of the Code would apply to the missed distributions. Please note, however, that Taxpayer A and Taxpayer B may apply separately for a waiver of any excise taxes under section 4974(d) by completing IRS Form 5329 and attaching it to their tax returns, provided the missed distributions were due to reasonable error and reasonable steps are being taken to remedy the shortfall.

With respect to your fourth and eighth requested rulings, these rulings involve section 6662 of the Code, a section that is outside Employee Plans Technical Office's

jurisdiction under section 6.02 of Rev. Proc. 2014-4. Therefore, we are unable to rule with respect to ruling requests (4) and (8).

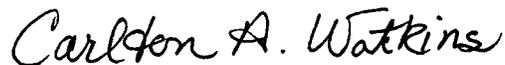
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter is directed only to Taxpayers A and B, who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being sent to your authorized representative in accordance with a Power of Attorney (Form 2848) on file with this office.

If you have any questions, please contact _____ (I.D. # _____) by phone at _____ or fax at _____. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose

cc: