

Internal Revenue Service

Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

In Re:

Refer Reply To:
CC:TEGE:EB:QP1
PLR-108823-17

Date:
September 12, 2017

Legend

Decedent =
Trust =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Daughter =
Company 1 =
Company 2 =
Amount 1 =
Amount 2 =
Amount 3 =
Amount 4 =
State A =
Law 1 =
Subtrust
Accounts

Court =

Dear _____ :

This is in response to the March 10, 2017, letter submitted on your behalf by your authorized representative, as supplemented by further correspondence dated July 7, 2017, and September 8, 2017, in which you request a letter ruling under section 401(a)(9) of the Internal Revenue Code (“Code”) and its corresponding Treasury Regulations.

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

Decedent established the Trust, a living revocable trust, on Date 1. On Date 2, Decedent died at age 61 and was survived by Daughter, born on Date 3. Upon Decedent’s death, the Trust became an irrevocable trust with Daughter as the sole beneficiary of the Trust. Further, the Trust contains a subtrust established to hold all assets from Decedent’s retirement accounts (the “Subtrust”). Daughter is also the sole beneficiary of the Subtrust. At the time of her death, Decedent held one traditional individual retirement account, one Roth individual retirement account, and two annuity contracts under her former employer’s section 403(b) plan (together, the “Retirement Accounts”). The Retirement Accounts held insurance and annuity contracts administered by Company 1 and Company 2. At the time of Decedent’s death, the approximate value of the assets held in each of the Retirement Accounts was Amount 1, Amount 2, Amount 3, and Amount 4, respectively. Subsequent to Decedent’s death, Trustee transferred the assets of the Retirement Accounts into Subtrust Accounts.

Article 5.1 of the Trust states that the Trust shall be governed by State A law. Article 5.6 of the Trust states that the determination with respect to what is income and what is principal of the Trust estate shall be governed by Law 1.

Article 6 of the Trust is titled “Designed Beneficiary Trust” and creates the Subtrust. Article 6.1 of the Trust states that it is the intent of Decedent that “this [Subtrust] qualifies as a ‘see through’ or ‘conduit’ trust within the meaning of [section] 1.401(a)(9)-4, A-5.” It further states that all provisions of the Subtrust be construed in accordance with this primary intent. Article 6.1 also states that the Subtrust is intended to be the beneficiary of the Retirement Accounts. “Retirement Benefits” are defined in Article 6.7 of the Trust to include any benefit payable under the Trust under an IRA as defined in section 408, a Roth IRA as defined in section 408A, an annuity or mutual fund plan under section 403(b), or any other retirement plan that is subject to section the minimum distribution requirements of 401(a)(9).

Article 6.3 of the Trust lists Daughter as the beneficiary of the Subtrust.

Article 6.4.1 of the Trust states that, following the death of Decedent, beginning in the year of Decedent's death, Trustee shall withdraw benefits equaling the minimum required distribution from any retirement account for which the Subtrust is named the beneficiary and distribute those amounts (net of expenses) free of trust to Daughter or Daughter's successors if Daughter fails to survive full distribution of her share in the Subtrust. Article 6.4.1 of the Trust further states that Trustee may pay or apply for the benefit of Daughter (or the successor of Daughter's interest if Daughter fails to survive full distribution of her interest in Subtrust), as much of the income and principal of the Subtrust that the Trustee deems necessary for Daughter's (or Daughter's successors) health, maintenance, support, or education.

Article 6.4.4 of the Trust states that if a beneficiary for whom assets are being held dies before reaching the age of 30, any undistributed balance of his or her share shall be distributed to any person or entity the beneficiary appoints either through a written instrument exercising this power of appointment or a valid will or living trust. If the beneficiary does not exercise his or her power of appointment, the undistributed balance shall be distributed to the beneficiary's issue.

Article 6.5.1 of the Trust states that no retirement benefit may be distributed to any non-individual beneficiary.

Article 6.8 excludes from the definition of "issue" any person adopted by the beneficiary that is (1) adopted after the death of Decedent; and (2) older than the oldest beneficiary of the Subtrust who was a class member at the time of the death of Decedent.

Based on the foregoing, you request a ruling that pursuant to the provisions of sections 1.401(a)(9)-5, Q&A-5(b), 1.401(a)(9)-5, Q&A-5(c), and 1.401(a)(9)-4 Q&A-5, that the applicable distribution period for the subject retirement accounts held by Decedent is to be calculated based on the life expectancy of Daughter, the designated beneficiary of the Subtrust.

Under section 401(a)(9)(A), a trust will not be considered qualified unless the plan provides that the entire interest of each employee (1) will be distributed to such employee not later than the required beginning date, or (2) will be distributed, beginning no later than the required beginning date, 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) provides that when an employee dies before distributions have begun under subparagraph (A)(ii), the entire portion of such interest will be distributed within 5 years after the death of such employee.

Section 401(a)(9)(B)(iii) provides an exception to section 401(a)(9)(B)(ii) under which if any portion of an employee's benefit is payable to a designated beneficiary, the portion will be distributed over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), provided such distributions begin no later than one year after the employee's death or such later date as the Secretary may prescribe by regulations.

Section 401(a)(9)(C)(i) provides that "required beginning date" means April 1 of the calendar year following the later of (1) the calendar year in which the employee turns age 70 1/2, or (2) the calendar year in which the employee retires.

Section 401(a)(9)(E) provides that "designated beneficiary" means any individual designated as a beneficiary by the employee.

Section 1.401(a)(9)-4, Q&A-1, provides, in relevant part, that a designated beneficiary is an individual who is designated as a beneficiary under the plan. An individual may be designated as a beneficiary under the plan either by the terms of the plan or, if the plan so provides, by an affirmative election by the employee (or the employee's surviving spouse) specifying the beneficiary. A designated beneficiary need not be specified by name in the plan in order to be a designated beneficiary so long as the individual who is to be the beneficiary is identifiable under the plan. The member of a class of beneficiaries capable of contraction or expansion will be treated as being identifiable if it is possible to identify the class member with the shortest life expectancy.

Section 1.401(a)(9)-4, Q&A-3, provides that only individuals may be designated beneficiaries for purposes of section 401(a)(9). A person who is not an individual, such as the employee's estate or a charitable organization, may not be a designated beneficiary. If a person other than an individual is designated as a beneficiary of an employee's benefit, the employee will be treated as having no designated beneficiary for purposes of section 401(a)(9), even if there are also individuals designated as beneficiaries.

Section 1.401(a)(9)-4, Q&A-4, provides in relevant part, that in order to be a designated beneficiary, an individual must be a beneficiary as of the date of the employee's death. Generally, an employee's designated beneficiary will be determined based on the beneficiaries designated as of the date of death who remain beneficiaries as of September 30 of the calendar year following the calendar year of the date of death.

Section 1.401(a)(9)-4, Q&A-5, provides that where a trust is named as a beneficiary of an employee, the trust is not a designated beneficiary; however, beneficiaries of the trust with respect to the trust's interest in the employee's benefit may be treated as designated beneficiaries if the following requirements are met: (1) the trust is valid under state law, or would be but for the fact there is no corpus; (2) the trust is irrevocable or will, by its terms, become irrevocable upon the death of the employee; (3) the beneficiaries of the trust who are beneficiaries with respect to the trust's interest in

the employee's benefit are identifiable within the meaning of section 1.401(a)(9)-4, Q&A-1, from the trust instrument; and (4) relevant documentation has been timely provided to the plan administrator.

Section 1.401(a)(9)-4, Q&A-6(b), provides, in relevant summary, that to meet the requirements set forth in Q&A-5, at a minimum, documentation sufficient to enable a plan administrator or an IRA custodian to identify beneficiaries of the plan or IRA must be provided by a trustee to the custodian by October 31 of the calendar year immediately following the calendar year in which the IRA owner died.

Section 1.401(a)(9)-5, Q&A- 5(b), provides that if an employee dies before the employee's required beginning date, the applicable distribution period for minimum distributions for distribution calendar years after the distribution calendar year containing the employee's date of death is determined in accordance with section 1.401(a)(9)-5, Q&A-5(c)

Section 1.401(a)(9)-5, Q&A-5(c)(1), states that, with respect to minimum distributions paid to nonspouse designated beneficiary, the applicable distribution period measured by the beneficiary's remaining life expectancy is determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the employee's death. In subsequent calendar years, the applicable distribution period is reduced by one for each calendar year that has elapsed after the calendar year immediately following the calendar year of the employee's death.

Section 403(b)(10) provides that annuity contracts and custodial accounts must follow distribution requirements similar to those contained in section 401(a)(9).

Section 1.403(b)-6(e)(1) provides that a section 403(b) contract must meet the minimum required distribution rules of section 401(a)(9).

Section 408(a)(6) provides that, under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

Section 1.408-8, Q&A-1(a) provides that an IRA is subject to the required minimum distribution rules provided in section 401(a)(9). In order to satisfy section 401(a)(9), the rules of sections 1.401(a)(9)-1 through 1.401(a)(9)-9 must be applied, except as otherwise provided.

Section 1.408-8, Q&A-1(b) provides, as relevant, that for purposes of applying the required minimum distribution rules in sections 1.401(a)(9)-1 through 1.401(a)(9)-9, the IRA trustee, custodian or issuer is treated as the plan administrator, and the IRA owner is substituted for the employee.

Section 1.408-8, Q&A-3 provides that in the case of distributions from an IRA, the term "required beginning date" means April 1 of the calendar year following the calendar year in which the individual attains age 70 1/2.

Section 1.408A-6, Q&A-14 provides that, for some purposes, Roth IRAs are subject to the required minimum distribution rules under section 401(a)(9) and the accompanying Treasury Regulations.

You have requested a ruling that the applicable distribution period for the Retirement Accounts is to be calculated based on the life expectancy of Daughter, as the designated beneficiary of the Subtrust in accordance with sections 1.401(a)(9)-4, Q&A-5 and 1.401(a)(9)-5, Q&A-5. Because the Retirement Accounts each list the Subtrust as the beneficiary, we must determine whether the requirements of a "see-through" trust under section 1.401(a)(9)-4, Q&A-5, have been met with respect to the Subtrust. The documentation you provided establish that requirements 1, 2, and 4 of section 1.401(a)(9)-4, Q&A-5, have been met (the trust is valid and irrevocable and documentation has been provided). The third requirement - that the beneficiary or beneficiaries be identifiable within the trust document - must also be met in order to "see through" the Subtrust as beneficiary and find that Daughter is the sole designated beneficiary of the Retirement Accounts within the meaning of section 1.401(a)(9)-4, Q&A-1.

The determination of whether the Subtrust qualifies as a "see-through" trust depends on whether the beneficiaries of the Subtrust can be identified at the time of Decedent's death. Article 6.4.4 of the Trust provides Daughter with a testamentary general power of appointment. This power of appointment generally applies to any accumulation of Retirement Account distributions that will accumulate in the Subtrust. However, when read together, Articles 6.1 and 6.4.1 of the Subtrust require Trustee to pay to Daughter any and all funds in the Subtrust withdrawn by the Trustee, including the minimum distributions required under section 401(a)(9), during Daughter's lifetime.¹

Therefore, there can be no accumulation of Retirement Account distributions in the Subtrust for the benefit of any other beneficiary. Because Daughter is the only beneficiary named in the Subtrust, all beneficiaries with respect to the Subtrust's interest in the Retirement Accounts are identifiable within the meaning of section 1.401(a)(9)-4, Q&A-1 from the trust instrument. Accordingly, the Subtrust satisfies the requirements of a "see through" trust under section 1.401(a)(9)-4, Q&A-5. In addition, since Daughter was the sole designated beneficiary of the Retirement Accounts on Decedent's date of death and remained a beneficiary on September 30, of the calendar year following the calendar year of the Decedent's death, she is the designated beneficiary of the Retirement Accounts for purposes of section 1.401(a)(9)-4, Q&A-1.

¹ A court order issued by Court on Date 4 is consistent with this conclusion.

Pursuant to the provisions of sections 1.401(a)(9)-5, Q&A-5(b) and 1.401(a)(9)-5, Q&A-5(c), if an employee dies before his or her required minimum distributions are required to be distributed and payments are made to a nonspouse designated beneficiary, the required minimum distributions are based on the life expectancy of the designated beneficiary with the shortest life. Accordingly, the required minimum distributions with regard to the Retirement Accounts are to be calculated based on the life expectancy of Daughter, the sole designated beneficiary of the Subtrust.

This ruling expresses no opinion on the property rights of the parties under state law, and only provides a ruling on the impact of federal tax law on the specific facts presented.

This ruling is based on the assumption that the Retirement Accounts were properly combined into an IRA held within the Subtrust Accounts.

The ruling contained in this letter is 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. 2017-1, 2017-1 I.R.B. 1, § 7.01(15)(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. 2017-1, § 11.05.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Jason E. Levine
Senior Technician Reviewer
Qualified Plans Branch 4
Office of the Associate Chief Counsel
Tax Exempt and Government Entities