

Internal Revenue Service

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Person To Contact:
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Date:
June 25, 2018

Legend

Taxpayer	=
Decedent	=
Decedent's Children	=
State	=
Plan	=

Dear :

This is in response to your request dated February 5, 2018, in which your authorized representative, on your behalf, requested a ruling under section 402(c) of the Internal Revenue Code ("Code").

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

Decedent died in 2017 and was survived by his wife (Taxpayer) and his children (Decedent's Children). At the time of his death, Decedent was employed by State and was a participant in a qualified plan maintained by State. Under the terms of the Plan, upon a participant's death, Plan proceeds become payable to the participant's designated beneficiary. However, if a participant does not have a valid designated beneficiary in effect at the time of death, the Plan provides that the participant's benefit will be payable to the participant's estate. Because Decedent did not have a designated beneficiary in effect at the time of his death, the entire Plan benefit is payable to Decedent's estate.

Because Decedent died intestate, his estate would have been payable to Taxpayer and Decedent's Children under State law. However, Decedent's Children validly disclaimed

their interests in Decedent's estate in the year of Decedent's death. Under State law, Decedent's Children are treated as though they predeceased the Decedent because of the disclaimers. As a result, Taxpayer is the sole beneficiary of Decedent's estate.

Taxpayer, as the surviving spouse of Decedent and sole beneficiary of Decedent's estate, intends to cause the Plan to pay Decedent's benefit to the estate and, within 60 days after the date of the distribution from the Plan, to roll the entire distribution from the Plan into an IRA set up and maintained in Taxpayer's name.

Based on the above facts and representations you, through your authorized representative, request the following ruling:

Taxpayer may roll over the Plan benefit into an IRA set up and maintained in Taxpayer's name provided that the rollover is completed within 60 days after the date the distribution is made from the Plan. To the extent that the amount distributed from the Plan is timely rolled over to that IRA, it will be excluded from Taxpayer's income under section 402(c)(1) of the Code.

Section 402(a)(1) of the Code provides, in general, that any amount actually distributed to any distributee by any employee trust as described in section 401(a) of the Code which is exempt from tax under section 501(a) of the Code shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 of the Code (relating to annuities).

Section 402(c)(1) of the Code provides, generally, that if any portion of an eligible rollover distribution from a qualified trust 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)(3)(A) of the Code provides, generally, that except as provided in subparagraph (B) (hardship exception), section 402(c)(1) will not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

Similarly, section 1.402(c)-2, Q&A 11 of the Income Tax Regulations states that if an eligible rollover distribution is paid to an employee and the employee contributes all or any part of the eligible rollover distribution to an eligible retirement plan no later than the 60th day following the date the employee received the distribution, the amount contributed is not currently includible in gross income.

Section 402(c)(4) of the Code defines "eligible rollover distribution" as any distribution to an employee of all or any portion of the balance to the credit of an employee in a qualified trust except the following distributions:

- (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 the distribution is required under section 401(a)(9), and
- (C) any distribution which is made upon the hardship of the employee.

Section 402(c)(5) of the Code provides that a transfer to an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B) of the Code resulting in any portion of a distribution being excluded from gross income under section 402(c)(1) of the Code shall be treated as a rollover contribution described in section 408(d)(3).

Under section 402(c)(8)(B)(i) of the Code, an individual retirement account described in section 408(a) is an eligible retirement plan.

Section 402(c)(9) of the Code 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)(1) through (8) apply to the distribution in the same manner as if the spouse was the employee.

Because Decedent's Children disclaimed their interests in Decedent's estate under State law, Taxpayer is the sole beneficiary of Decedent's estate. Taxpayer intends to cause the Plan to distribute Decedent's entire benefit under the Plan to the estate and to roll over all of the proceeds to an IRA established and maintained in Taxpayer's name within 60 days after the date of the distribution from the Plan. Because Taxpayer is treated as an employee under section 402(c)(9), to the extent that she timely rolls over the amount of the distribution from the Plan, she may exclude that amount from income under section 402(c)(1).

Thus with respect to your ruling request, we conclude as follows:

Taxpayer may roll over the Plan benefit into an IRA set up and maintained in Taxpayer's name provided that the rollover is completed within 60 days after the date the distribution is made from the Plan. To the extent that the amount distributed from the Plan is timely rolled over to that IRA, it will be excluded from Taxpayer's income under section 402(c)(1) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9).

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 letter is based on the representation that Taxpayer is the sole beneficiary of Dedent's estate under State law and the assumption that the IRA that will be established by Taxpayer to facilitate the rollover described herein meets the requirements of section 408 of the Code at all relevant times.

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.

Sincerely,

Keith R. Kost
Senior Technician Reviewer
Qualified Plans Branch 2
Office of Associate Chief Counsel
(Tax Exempt and Government Entities)

cc: