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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

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Person To Contact:

, ID No.

Telephone Number:

In Re: Private Letter Ruling

Refer Reply To:

CC:TEGE:EB:QP4

PLR-138069-17

Date:

July 09, 2018

Trust A =
Decedent B =
Child C =
Child D =
Child E =
Child F =
Child G =
Employer H =
Plan I =
State J =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Year 1 =
Year 2 =
Year 3 =
Year 4 =

Dear :

This letter responds to Trust A's request dated November 15, 2017, as supplemented by correspondence dated May 31, 2018, in which several rulings are requested under sections 401(a)(9) and 402(c)(11) of the Internal Revenue Code.

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

Decedent B established Trust A, an irrevocable living trust, on Date 2. On Date 3, Decedent B died at age 54 and was survived by his children, Child C, Child D, Child E, Child F, and Child G. Child C is the oldest child and was born on Date 1. At the time of his death, Decedent B was employed by Employer H and participated in Plan I, a 401(k) retirement plan qualified under section 401(a). Prior to Decedent B's death, Decedent B executed an "enrollment form" that designated Trust A as his primary beneficiary.

Sections 2 and 3 of Article IV of Trust A provides for the creation of three separate discretionary trusts for the benefit of Child C, Child D, and Child E, respectively, upon the death of Decedent B.

Based on the mandatory division of Article IV of Trust A and the discretionary power of section 20 of Article XI of Trust A, the trustees of Trust A created two substantially similar trusts (an "A trust" and a "B trust") for each of Child C, Child D, and Child E, respectively, for a total of six trusts (collectively, the "Discretionary Trusts"). The exercise of the discretionary power was pursuant to a severance agreement dated Date 4, which is valid under the laws of State J. The Discretionary Trusts are valid under the laws of State J. The trustees of Trust A are the trustees of each Discretionary Trust.

The Discretionary Trusts (both the A trust and the B trust) for each of Child C, Child D, and Child E, respectively, have that child as the beneficiary (hereafter, the "Beneficiary" of a Discretionary Trust shall refer to the child for whose benefit that Discretionary Trust was created). The B trust for each of Child C, Child D, and Child E, respectively, has Child F and Child G, as the remainder beneficiaries. The A trust for each of Child C, Child D, and Child E, has the Beneficiaries under the other two Discretionary Trusts as the remainder beneficiaries (that is, Child C's A trust has Child D and Child E as the remainder beneficiaries, Child D's A trust has Child C and Child E as the remainder beneficiaries, and Child E's A trust has Child C and Child D as the remainder beneficiaries).

Article V of Trust A sets out the terms of the Discretionary Trusts. During the term of each Discretionary Trust, the trustee may distribute to the Beneficiary income and principal for the support and reasonable comfort, medical care and education of the Beneficiary prior to the beneficiary attaining age 30, and for the best interests of the Beneficiary after attaining age 30. Upon death of the Beneficiary, if the Beneficiary has attained age 30, the Beneficiary may appoint all of the remaining principal and accumulated income to or for the benefit of all or any person, persons, or charitable organizations or combination thereof other than the Beneficiary, or the estate, the creditors, or the creditors of the estate of the Beneficiary. To the extent that the Beneficiary does not exercise this power, the remaining principal and income are to be distributed to the Beneficiary's lineal descendants, per stirpes, and if there are none, to the lineal descendants of the Beneficiary's most immediate ancestor who was a descendent of Decedent B, per stirpes, and who has one or more lineal descendants

then living, and if there are none, then per stirpes to the lineal descendants of Decedent B.

None of Child C, Child D, or Child E had any descendants as of Decedent B's death.

On Date 4, which was September 30th of the calendar year following Decedent B's death, Child C, Child D, and Child E each executed an "Irrevocable Partial Release Power of Appointment" (the "Releases"). The Releases irrevocably released each Beneficiary's right to appoint at his or her death any portion of the income or principal of that Beneficiary's Discretionary Trust to any person or entity other than to a person who is younger than Child C (either outright or through a "see-through trust" under the Discretionary Trust). The Releases were executed in accordance with the law of State J.

A copy of Trust A was provided to the plan administrator of Plan I by October 30 of the year following the year of Decedent B's death.

For Year 1, Year 2, Year 3, and Year 4, the Discretionary Trusts distributed the required minimum distributions for Decedent B's interest in Plan I to the Discretionary Trusts. The required distribution was computed using the life expectancy of Child C.

Additionally, individual retirement plans, as described in section 408(a) or 408(b), have been established for the purpose of receiving rollover distributions from the account of Plan I of which the Discretionary Trusts are beneficiaries

Based on the above, you, through your authorized representative, request the following letter rulings:

1. That each of the Beneficiaries of the Discretionary Trusts established under Trust A will be treated as a "designated beneficiary" within the meaning of section 401(a)(9)(E) and § 1.401(a)(9)-4, Q&A-1 and 5 of the Income Tax Regulations (Regulations);
2. That Child C, having the shortest life expectancy of any Beneficiary of the Discretionary Trusts established under Trust A, will be the designated beneficiary for purposes of determining the applicable distribution period under § 1.401(a)(9)-5, Q&A-7;
3. That any direct rollover from Plan I to any IRAs established on behalf of the Discretionary Trusts that are treated as an inherited IRA pursuant to section 402(c)(11) will not be included in the taxable income of the Discretionary Trust in the year in which the direct rollover is made.

With respect to your ruling requests, section 401(a)(9)(A) provides, in general, that a trust will not be considered qualified unless the plan provides that the entire interest of each employee --

- (i) will be distributed to such employee not later than the required beginning date, or
- (ii) will be distributed, beginning not 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 the distribution of the employee's interest has begun in accordance with section 401(a)(9)(A)(ii), the entire interest of the employee will be distributed within 5 years after the death of such employee (the "5-year rule").

Section 401(a)(9)(B)(iii) provides an exception to the 5-year rule: if –

- (I) any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary,
 - (II) such portion will be distributed over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and
 - (III) such distributions begin not later than 1 year after the date of the employee's death or such later date as the Secretary may by regulations prescribe,
- for purposes of clause (ii), the portion referred to in subclause (I) shall be treated as distributed on the date on which such distributions begin.

Section 401(a)(9)(C) provides, in relevant part, that, for purposes of section 401(a)(9), the term "required beginning date" means April 1 of the calendar year following the calendar year in which the employee attains age 70 1/2.

Section 401(a)(9)(E) provides that for the purpose of section 401, the term "designated beneficiary" means any individual designated as a beneficiary by the employee.

Section 1.401(a)(9)-3, Q&A-3(a), provides that if the spouse is not the sole designated beneficiary, distributions are required to begin on or before the end of the calendar year immediately following the calendar year in which the employee died.

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. Under these Regulations, 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. Further, the passing of an employee's interest to an individual under a will or otherwise under applicable state law will not make that individual a designated

beneficiary under section 401(a)(9)(E) unless that individual is designated as a beneficiary under the plan.

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 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. If by that September 30 a person disclaims entitlement to the employee's benefit, pursuant to a disclaimer that satisfies section 2518 thereby allowing other beneficiaries to receive the benefit in lieu of that person, the disclaiming person is not taken into account in determining the employee's designated beneficiary.

Section 1.401(a)(9)-4, Q&A-5(a), provides that if the requirements under Q&A-5(b) are met with respect to a trust that is named as the beneficiary of an employee under a plan, the beneficiaries of the trust with respect to the trust's interest in an employee's benefit (and not the trust itself) will be treated as having been designated as beneficiaries of the employee for purposes of determining the distribution period under section 401(a)(9).

Section 1.401(a)(9)-4, Q&A-5(b), provides that the requirements of Q&A-5(b) are met, if during any period during which required minimum distributions are being determined by treating the beneficiaries of the trust as designated beneficiaries of the employee, 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 A-1 of this section from the trust instrument.
- (4) relevant documentation has been timely provided to the plan administrator.

Section 1.401(a)(9)-4, Q&A-5(c), provides that if the trust has more than one beneficiary, the rules under § 1.401(a)(9)-5, Q&A-7, determine which beneficiary's life expectancy shall be used to determine the distribution period.

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

Section 1.401(a)(9)-5, Q&A-7(b), provides that if a beneficiary's entitlement to an employee's benefit after the employee's death is a contingent right, such contingent beneficiary is nevertheless considered to be a beneficiary for purposes of determining which designated beneficiary has the shortest life expectancy under Q&A-7(a).

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)(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 trust qualified under section 401(a), (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)(11) describes distributions to an inherited individual retirement plan of a nonspouse beneficiary, and provides:

(A) In general. If, with respect to any portion of a distribution from an eligible retirement plan described in paragraph (8)(B)(iii) of a deceased employee, a direct trustee-to-trustee transfer is made to an individual retirement plan described in clause (i) or (ii) of paragraph (8)(B) established for the purposes of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined by section 401(a)(9)(E)) of the employee and who is not the surviving spouse of the employee --

- (i) the transfer shall be treated as an eligible rollover distribution,
- (ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)) for purposes of this title, and
- (iii) section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan.

(B) Certain trusts treated as beneficiaries. -- For purposes of this paragraph, to the extent provided in rules prescribed by the Secretary, a trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

RULING 1

The beneficiaries of the Discretionary Trusts created under Trust A will be considered designated beneficiaries under section 401(a)(9) if the Discretionary Trusts satisfy the requirements of § 1.401(a)(9)-4, Q&A-5(b).

Your request stated, and the IRS assumes for purposes of this ruling, that the Discretionary Trusts are valid under the law of State J, that Trust A was irrevocable from the time of execution, and that a copy of the Discretionary Trusts created under Trust A were provided to the plan administrator of Plan I by October 30th of the year following the year of Decedent B's death (as required by § 1.401(a)(9)-4, Q&A-6). Therefore, the remaining question is whether or not the beneficiaries of the Discretionary Trusts are identifiable within the meaning of § 1.401(a)(9)-4, Q&A-1. A class of beneficiaries will be treated as identifiable if the beneficiary with the shortest life expectancy can be identified. Only individuals may be designated beneficiaries.

Under the terms of each of Child C's, Child D's, and Child E's Discretionary Trusts, the respective child is the only beneficiary until that child's death. The trustee may distribute to that child income and principal for the support and reasonable comfort, medical care and education of that child prior to that child attaining age 30, and for the best interests of that child after attaining age 30. Because the Discretionary Trusts are not required to be distributed in their entirety to the respective Beneficiaries, some portion of the Discretionary Trust may remain after the death of the respective Beneficiary. Accordingly, the remainder beneficiaries are contingent beneficiaries that must be considered to be beneficiaries for purposes of determining which designated beneficiary has the shortest life expectancy.

Under the terms of each of Child C's, Child D's, and Child E's Discretionary Trusts, upon death of that child, if that child has attained age 30, that child may appoint all of the remaining principal and accumulated income to or for the benefit of all or any person, persons, or charitable or organizations or combination thereof other than that child, or the estate, the creditors, or the creditors of the estate of that child.

Child C, Child D, and Child E each executed a Release on Date 4. Your request stated that the Releases were executed in accordance with the law of State J. Pursuant to the Releases, Child C, Child D, and Child E relinquished their respective rights to appoint at their deaths any portion of the income or principal of the Discretionary Trust to any beneficiary who is not a natural person or who is born before Child C. Accordingly, after attaining age 30, the child has a power of appointment, upon the death of that child, exercisable in favor of only individuals younger than Child C.

To the extent that the child does not exercise the power of appointment, the remaining principal and income are to be distributed to that child's lineal descendants, and if there are none, then to the lineal descendants of Decedent B. Your request stated that Child C, Child D, and Child E did not have any descendants as of Decedent B's death. In order to be a designated beneficiary, an individual must be a beneficiary as of the date of Decedent B's death. As a result, to the extent that the child does not exercise the power of appointment, for purposes of section 401(a)(9), any potential remainder beneficiaries of the Discretionary Trusts will be limited to the lineal descendants of Decedent B (that is, Child C, Child D, Child E, Child F, and Child G). In addition, because Child C is the oldest living lineal descendent of Decedent B, no potential beneficiary could have a life expectancy shorter than Child C.

As a result of the Releases, the class of potential beneficiaries as of September 30 of the year following Decedent B's death contained only individuals, and the beneficiary with the shortest life expectancy was identifiable. Accordingly, all four requirements of § 1.401(a)(9)-4, Q&A-5(b) are met.

Therefore, with respect to the first ruling request, the beneficiaries of the Discretionary Trusts will be treated as "designated beneficiaries" within the meaning of section 401(a)(9)(E) and § 1.401(a)(9)-4, Q&A-1 and 5.

RULING 2

Because the Discretionary Trusts created under Trust A had more than one designated beneficiary as of September 30 of the year following the year of Decedent B's death, the beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the applicable distribution period. Child C, Child D, and Child E are the beneficiaries of their respective Discretionary Trusts while each is alive, and prior to attaining age 30, the remainder beneficiaries of the Discretionary Trusts consist of Child C, Child D, Child E, Child F, and Child G. At age 30, Child C, Child D, and Child E may exercise, for their respective Discretionary Trusts, an appointment power upon death with regard to the remainder in the trust, but only in favor of a natural person who is not older than Child C. Should a child fail to exercise this power, the assets pass to his or her lineal descendants (and there were none at the time of Decedent B's death) or the descendants of Decedent B (which consist of Child C, Child D, Child E, Child F, and Child G). Child D, Child E, Child F, and Child G are all younger than Child

C. Therefore, with respect to the second ruling request, we conclude that Child C is the designated beneficiary of Discretionary Trusts created under Trust A with the shortest life expectancy, and Child C's life expectancy will determine the applicable distribution period for Decedent B's interest in Plan I.

RULING 3

In Ruling 1, we concluded that the beneficiaries of the Discretionary Trusts are designated beneficiaries of Decedent B within the meaning of section 401(a)(9)(E). Your request stated that individual retirement plans, as described in section 408(a) or 408(b), have been established for the purpose of receiving a rollover distribution from the account of Plan I. Therefore, with respect to your third ruling request, we conclude that the transfer of any portion of a distribution from Decedent B's account in Plan I to an individual retirement plan described in section 408(a) or 408(b), established for the purpose of receiving the respective distribution on behalf of the Discretionary Trusts, shall be treated as an eligible rollover distribution within the meaning of section 402(c)(4), and the individual retirement plan shall be treated as an inherited individual retirement account or annuity within the meaning of section 402(c)(11).

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 letter is based on the assumption that Plan I is otherwise qualified under section 401(a) at all relevant times, and that all provisions of Trust A and all actions by the trustees discussed or referenced in this letter comply with the laws of State J.

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.

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. 2018-1, 2018-1 I.R.B. 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. 2018-1, § 11.05.

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,

Cathy V. Pastor
Senior Counsel
Qualified Plans, Branch 4
Tax Exempt & Government Entities