

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201902023**
Release Date: 1/11/2019
Index Number: 401.06-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:TEGE:EB:QP3
PLR-113361-18

Date:
October 15, 2018

Decedent =
Trust =
Subtrust =
Trustee =
Beneficiary =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
State X =

Dear :

This is in response to the April 13, 2018 letter, supplemented by correspondence dated July 6, 2018 and October 11, 2018, submitted on your behalf by your authorized representative, 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 requested ruling:

Decedent established the Trust, a living revocable trust, on Date 1, subsequently amended and restated in its entirety on Date 2. The Trust document establishes a Subtrust to hold the benefits and distributions from any retirement plan, including a traditional individual retirement account (IRA). The Trust and Subtrust are valid under the laws of State X. Decedent died on Date 3, after his required beginning date under section 401(a)(9) and after distributions under the IRA had begun. The Trust and Subtrust became irrevocable upon Decedent’s death.

At the time of death, Decedent held an IRA. The IRA adoption agreement, executed on

Date 4, names the Trust as the designated beneficiary. Prior to October 31 of the calendar year immediately following the calendar year of Decedent's death, on Date 5, the Trustee delivered the Trust document for the Trust and Subtrust to the IRA custodian.

The terms of the Trust document governing the Subtrust provide that all property held by the Subtrust will be held, administered, and distributed for the benefit of Beneficiary. The Trust document further states that Beneficiary shall be the sole beneficiary of the Subtrust, and that all retirement benefits distributed to the Trustee, including required minimum distributions, shall be paid directly to the Beneficiary upon receipt by the Trustee, so that the Trustee shall serve as a conduit only. It also states that upon Beneficiary's death, any tax-qualified retirement plans or accounts, including the remaining assets of the Subtrust, shall be divided equally between and distributed to Decedent's children or their descendants.

Finally, you have represented that Beneficiary is Decedent's surviving spouse and that Decedent was older than Beneficiary.

Based on the foregoing, you request the following rulings:

- 1) The requirements of section 1.401(a)(9)-4, Q&A-5 are satisfied with respect to the Trust and the Subtrust and therefore the individual Beneficiary of the Subtrust is treated as the designated beneficiary of the IRA for purposes of determining the applicable distribution period under section 401(a)(9); and
- 2) The applicable distribution period for Decedent's IRA is to be calculated based on the life expectancy of Beneficiary.

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)(i) provides that a trust shall not constitute a qualified trust under the Code unless the plan provides that if the distribution of the employee's interest has begun in accordance with section 401(a)(9)(A)(ii), and the employee dies before his entire interest has been distributed to him, the remaining portion of such interest will be distributed at least as rapidly as under the method being used under section 401(a)(9)(A)(ii) as of the date of death.

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) the documentation described in section 1.401(a)(9)-4, Q&A-6, has been provided to the plan administrator.

Section 1.401(a)(9)-4, Q&A-5(c), states that in the case of payments to a trust having more than one beneficiary, see A-7 of Section 1.401(a)(9)-5 for the rules for determining the designated beneficiary whose life expectancy will be used to determine the

distribution period.

Section 1.401(a)(9)-4, Q&A-5(d), states that if the beneficiary of the trust named as beneficiary of an employee's interest is another trust, the beneficiaries of the other trust will be treated as having been designated as beneficiaries of the first trust, and thus, as having been designated by the employee under the plan for purposes of determining the distribution period under section 401(a)(9)(A)(ii), provided that the requirements of section 1.401(a)(9)-4, Q&A-5(b), are satisfied with respect to such other trust in addition to the trust named as beneficiary.

Section 1.401(a)(9)-4, Q&A-6(b), states, in relevant part, with respect to required minimum distributions after the death of an employee, that documentation described therein must be provided by the trustee of the trust/beneficiary to the plan administrator by October 31 of the calendar year following the calendar year in which the employee died. Such documentation includes a copy of the actual trust document for the trust that is named as a beneficiary of the employee under the plan as of the employee's date of death.

Section 1.401(a)(9)-5, Q&A-5(a), provides, in relevant part, that if an employee dies after distribution of his interest has begun (generally on or after the employee's required beginning date) and the employee's sole designated beneficiary as of the date determined under section 1.401(a)(9)-4, Q&A-4, is his or her spouse, in order to satisfy section 401(a)(9)(B)(i), the applicable distribution period for distribution calendar years after the distribution calendar year containing the employee's date of death is the longer of (i) the remaining life expectancy of the employee's surviving spouse determined in accordance with section 1.401(a)(9)-5, Q&A-5(c)(2), and (ii) the remaining life expectancy of the employee determined in accordance with section 1.401(a)(9)-5, Q&A-5(c)(3).

Section 1.401(a)(9)-5, Q&A-5(c)(2), provides that if the surviving spouse of an employee is the employee's sole beneficiary, the applicable distribution period is measured by the surviving spouse's life expectancy using the surviving spouse's birthday for each distribution calendar year after the calendar year of the employee's death up through the calendar year of the spouse's death. For calendar years after the calendar year of the spouse's death, the applicable distribution period is the life expectancy of the spouse using the age of the spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each calendar year that has elapsed after the calendar year of the spouse's death.

Section 1.401(a)(9)-5, Q&A-5(c)(3), provides that if an employee does not have a designated beneficiary, the applicable distribution period measured by the employee's remaining life expectancy is the life expectancy of the employee using the age of the employee as of the employee's birthday in 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 of the employee's death.

Section 1.401(a)(9)-9, Q&A-1, provides the Single Life Table for use in determining the life expectancy of an individual.

Section 1.401(a)(9)-5, Q&A-7, provides, in general, that if more than one beneficiary is designated as a beneficiary by an employee as of the applicable date for determining the designated beneficiary under section 1.401(a)(9)-4, Q&A-4, the beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining required distributions.

Section 1.401(a)(9)-5, Q&A-7(b), provides that except as provided in section 1.401(a)(9)-5, Q&A-7(c)(1), contingent beneficiaries of the interest of an employee must be considered for purposes of determining which life expectancy to use for purposes of computing minimum required distributions.

Section 1.401(a)(9)-5, Q&A-7(c)(1), provides that a person will not be considered a beneficiary for purposes of computing section 401(a)(9) minimum required distributions merely because the person could become the successor to the interest of one of the employee's beneficiaries after the death of said beneficiary. However, this rule does not apply to a person who has any right (including a contingent right) to an employee's benefit beyond being a mere potential successor to the interest of one of the employee's beneficiaries upon that beneficiary's death.

Section 408(a)(6) provides that, with respect to IRAs, 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.

With respect to your first ruling request, you have represented that the Trust is valid and irrevocable and that the required documentation has been provided, in accordance with

section 1.401(a)(9)-4, Q&A-5(b)(1), (2), and (4). The Trust document identifies Beneficiary as the sole beneficiary of the Subtrust in accordance with section 1.401(a)(9)-4, Q&A-5(b)(3). In addition, the Trust document requires the Trustee to pay Beneficiary any and all funds in the Subtrust withdrawn by the Trustee, including required minimum distributions under section 401(a)(9), and there can be no accumulation on behalf of any other beneficiary. Therefore, we conclude that the requirements of section 1.401(a)(9)-4, Q&A-5, are met with respect to the Trust and the Subtrust and that the individual Beneficiary of the Subtrust is treated as the sole designated beneficiary of Decedent's IRA.

With respect to your second ruling request, under section 1.401(a)(9)-5, Q&A-5(a), the applicable distribution period for distribution calendar years after the distribution calendar year containing Decedent's death is the longer of (i) the remaining life expectancy of Beneficiary determined in accordance with section 1.401(a)(9)-5, Q&A-5(c)(2), and (ii) the remaining life expectancy of Decedent determined in accordance with section 1.401(a)(9)-5, Q&A-5(c)(3). Because Beneficiary's life expectancy is longer than Decedent's, the applicable distribution period for Decedent's IRA is based on the life expectancy of Beneficiary.

This letter ruling is based on the assumption that Decedent's IRA referenced herein was and is valid within the meaning of section 408 at all times relevant thereto. This letter ruling is also based on the assumption that Beneficiary remained a beneficiary on September 30 of the calendar year following the calendar year of Decedent's death, pursuant to section 1.401(a)(9)-4, Q&A-4(a).

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the proposed transaction under any other provision of the Code or regulations.

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, § 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,

John T. Ricotta
Branch Chief
Qualified Plans Branch 3
(Tax Exempt & Government Entities)