

**Internal Revenue Service
memorandum**

date: SEP 30 1997

to: Larry Heben
Employee Plans Technical and Actuarial Division

from: Chief, Branch One
Office of Associate Chief Counsel
(Employee Benefits and Exempt Organizations)

subject: Ruling Request of [REDACTED]

This is in response to your request of July 1, 1997, that we provide you with assistance on a private letter ruling request from the above-referenced taxpayer. The request concerns relief from withholding from a distribution from a qualified plan after the death of the taxpayer's husband.

The taxpayer, [REDACTED] was married to [REDACTED] died [REDACTED] He had been a participant in the [REDACTED] (the Plan) before his death. The total amount of death benefits payable under the Plan is approximately \$ [REDACTED]. His designated beneficiaries are his parents and his sister. Each of them has renounced any rights to benefits under the Plan. The taxpayer, [REDACTED] plans to receive the entire distribution from the Plan either in a direct trustee-to-trustee rollover to an individual retirement account (IRA) in her name or directly from the estate of [REDACTED]. If she receives the funds directly or from the estate, she intends to roll them over within 60 days to a new IRA which she will create in her own name and identification number.

In addition to other rulings, the taxpayer has requested a ruling to the effect that she will not be subject to the 20% income tax withholding rule of section 3405(c)(1) of the Code if she elects under section 401(a)(31) to have the \$ [REDACTED] paid directly to an eligible retirement plan or IRA.

Section 402(a) states that, except as otherwise provided in section 402, any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 (relating to annuities).

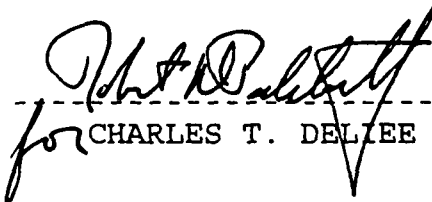
Section 402(c)(4) defines an eligible rollover distribution to mean any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust. Such term does not include any distribution which is one of a series of substantially equal periodic payments, made not less frequently than annually, over 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. Such term also does not include any distribution which is one of a series of substantially equal periodic payments made not less frequently than annually for a specified period of ten years or more. Finally, such term does not include any distribution to the extent such distribution is required under section 401(a)(9).

Section 402(c)(9) states that if any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, sections 402(c)(1) through 402(c)(8) shall apply to such distribution in the same manner as if the spouse were the employee.

Section 3405(c) provides that in the case of any designated distribution which is an eligible rollover distribution, sections 3405(a) and (b) shall not apply and the payor of such distribution shall withhold from such distribution an amount equal to 20% of such distribution. Section 3405(c)(2) states that the 20% withholding rule shall not apply to any distribution if the distributee elects under section 401(a)(31)(A) to have such distribution paid to an eligible retirement plan.

Provided that: the [REDACTED] is a plan described in section 401, the \$ [REDACTED] is to receive would otherwise be includible in gross income under section 402, and you rule favorably on issue two, we hold that if [REDACTED] has the \$ [REDACTED] paid directly to the trustee of an individual retirement plan established in her name, the distribution would not be subject to the 20% withholding of section 3405(c)(1)(B).

If you have any questions about this memorandum, contact William D. Gibbs of my staff at 622-6030.



for CHARLES T. DELIEE