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Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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Date:
March 04, 2015

Taxpayer =
Decedent =
Plan =
Trust =
Date 1 =

Dear :

This is in response to your request dated July 25, 2012, as supplemented by correspondence dated June 13, 2014, 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, Taxpayer's spouse, died on Date 1. At the time of his death, Decedent was retired and a participant in the Plan, a 401(k) plan of Decedent's former employer that is represented to meet the qualification requirements of section 401(a) of the Code. Decedent was taking minimum required distributions under section 401(a)(9) of the Code. Decedent's named beneficiaries under the Plan are Taxpayer (50%) and Trust (50%).

Trust is a joint living trust with Decedent and Taxpayer as Trustors and Trustees. The Trust provides that, upon death of Decedent, Taxpayer becomes sole Trustee and sole Trustor.

Trust provides that upon the death of either Trustor, the Trustee will divide the trust estate (including any additions to the trust estate as a result of the first Trustor to die) into two separate trusts, the Marital Trust and the Residuary Trust. Trust further provides that the Trustee, in making allocations or distributions, need not consider the basis of the various assets that are being distributed so that no attempt need be made to equalize the aggregate basis of assets distributed to the various distributees. The decision of the Trustee in allocating or distributing assets shall not be subject to challenge by anyone.

Trust further provides that the Trustee will pay or apply for the benefit of the surviving Trustor during his or her lifetime all of the net income of the Marital Trust in monthly installments but in no event less often than annually. Trust further provides that the surviving Trustor will have the right to direct the Trustee in writing to pay or apply for said survivor's benefit such amounts of the principal of the Marital Trust, up to the whole thereof, as the survivor may designate.

Taxpayer represents that she, as the sole Trustee of Trust, will direct that the Trust's 50% interest in the Plan be distributed to Trust and allocated to the Marital Trust. Taxpayer, as surviving Trustor, will direct the Trustee to distribute to herself as beneficiary of the Marital Trust the proceeds of the Plan. Taxpayer will then arrange a rollover contribution into an Individual Retirement Account ("IRA") established in her name. Such rollover would not include any required minimum distributions under section 401(a)(9) of the Code.

Based on the above facts and representations you, through your authorized representative, request a ruling that Taxpayer, as Decedent's surviving spouse, will be treated as having received the distribution from Trust, as directly from the Plan, and that, pursuant to section 402(c)(9) of the Code, she is eligible to roll over amounts distributed from the Plan into an IRA established in her name.

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

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)(8)(B) of the Code defines 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) an employees' trust described in section 401(a) which is exempt from tax under section 501(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)(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) shall apply to such distribution in the same manner as if the spouse were the employee.

In this case, Decedent designated Trust as a beneficiary of the Plan. Decedent's surviving spouse, Taxpayer, is the sole trustee of Trust. Under the terms of Trust, the decision as to which property will be allocated to the Marital Trust rests solely with Taxpayer, as Trustee. Pursuant to this authority, Taxpayer intends to allocate Trust's 50% interest in the Plan to the Marital Trust.

As Trustee of Trust, Taxpayer has the power to distribute to herself, for any purpose, any portion or all of the property of the Marital Trust. Taxpayer intends to distribute the proceeds of the Plan to Trust and allocate the proceeds to Marital Trust. Taxpayer then intends to distribute the proceeds of the Plan from Marital Trust to herself as beneficiary of the Marital Trust after which she intends to roll over the distribution to an IRA maintained in her own name.

Under section 402(c)(9) of the Code, if a distribution attributable to an employee is paid to the employee's spouse after the employee's death, the spouse will be treated as if the spouse was the employee. In this case, Taxpayer is the sole trustor, trustee, and beneficiary of Trust, and as such, has complete control and discretion as to the disposition of the distribution from Plan that is attributable to Decedent. Taxpayer intends to distribute the proceeds from Plan to herself as beneficiary. Since the distribution will be paid to Taxpayer, who is the employee's spouse with respect to Decedent's benefit in Plan, section 402(c)(9) applies and Taxpayer will be treated as if she were the employee. Accordingly, Taxpayer may contribute the proceeds distributed from Plan into an IRA set up and maintained in Taxpayer's name, provided that the contribution to the IRA occurs no later than the 60^{th} day after the date the amount was received by Trust from the Plan.

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

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 assumption that Trust is valid under applicable state law and any IRA established by Taxpayer will also meet the requirements of section 408 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,

Laura B. Warshawsky
Senior Tax Law Specialist
Qualified Plans Branch 2
Office of Associate Chief Counsel
(Tax Exempt & Government Entities)