Internal Revenue Service

Number: **201628006**
Release Date: 7/8/2016

Index Number: 401.06-00, 401.06-02, 408.02-01

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:TEGE:EB:QP4
PLR-116147-15

Date:
March 30, 2016

Legend:

Decedent =

Custodian A =

Custodian B =

Trust C =

Trust D =

Trust E =

Beneficiary F =

IRA X =

State =

Court =

Dear :

This letter is in response to your request, submitted on your behalf by your authorized representative, for a ruling under sections 408(a)(6) and 401(a)(9) of the Internal Revenue Code.

The following facts and representations have been submitted under penalties of perjury on your behalf:

Decedent maintained two individual retirement accounts (IRAs) with Custodian A and worked with financial advisors who were employed by Custodian A. Consistent with Decedent's overall estate plan, Decedent named Trust C as a 50% beneficiary, and Trusts D and E as 25% beneficiaries of the IRAs in a year after the year that included his required beginning date under section 401(a)(9).

Later that year, Decedent's financial advisors joined another firm and became affiliated with Custodian B. Decedent subsequently met with one of the financial advisors to facilitate the transfer of the IRA assets to Custodian B. The financial advisor provided a beneficiary designation form for Decedent's signature that named Decedent's estate as the sole beneficiary. Decedent signed that form and the assets of the two IRAs held by Custodian A were directly transferred to a new IRA (IRA X) held by Custodian B. It has been represented that, although Decedent signed the beneficiary designation form, he merely intended to move assets from Custodian A to Custodian B and that he did not intend to change beneficiaries as part of this transaction.

Trusts C, D, and E are represented as complying with the "look through" provisions of § 1.401(a)(9)-4, Q&A-5(b) of the Income Tax Regulations, and are represented to be valid under the law of State.

After Decedent's death, the trustees of the trusts petitioned the Court for a declaratory judgment that would modify the beneficiary designation for IRA X to carry out the original estate plan. Based on its finding of Decedent's intent, the Court ordered that the beneficiaries of IRA X are Trust C as a 50% beneficiary and Trusts D and E as 25% beneficiaries, consistent with Decedent's prior beneficiary designation. The order was retroactively effective as if such designation were made on the date Decedent signed the beneficiary designation form for IRA X.

Based on the foregoing, you request a ruling that the life expectancy (as set forth on the Single Life Table at § 1.401(a)(9)-9, Q&A-1) of Beneficiary F, the beneficiary of Trust C, based on the birthday such beneficiary will attain in the year after Decedent's death, may be utilized to determine the section 401(a)(9) "applicable distribution period" with respect to the portion of IRA X that is payable to Trust C.

With respect to your ruling requests, section 408(a)(6) provides, with respect to IRAs, that under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) 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 §§ 1.401(a)(9)-1 through 1.401(a)(9)-9 must be applied, except as otherwise provided in that section. For example, the rules of § 1.401(a)(9)-4 apply for purposes of determining an IRA owner's designated beneficiary.

Section 1.408-8, Q&A-1(b) provides that for purposes of applying the required minimum distribution rules in §§ 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 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)(C) provides, in relevant part, that for purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the calendar year in which the IRA holder attains age 70 1/2.

Section 401(a)(9)(B) provides that when an employee dies before his or her entire interest has been distributed but after distributions have begun under subparagraph of (A)(ii), the remaining portion of such interest will be distributed at least as rapidly as under the method being used under subparagraph (A)(ii) as of the date of death.

Section 401(a)(9)(E) provides that for purposes of section 401(a)(9), the term 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. However, 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. It also provides that a beneficiary who is designated as of the date of death may not be taken into account as a designated beneficiary if the person is no longer a beneficiary as of September 30 of the calendar year following the calendar year of the employee's death, such as when the person has received the entire benefit to which he or she is entitled prior to such date, or has disclaimed entitlement to the employee's benefit (through a qualifying disclaimer).

Section 1.401(a)(9)-4, Q&A-5 provides rules under which beneficiaries of a trust with respect to the trust's interest in an employee's benefit may be treated as designated beneficiaries if certain requirements are met.

Section 1.401(a)(9)-5, Q&A-5(a)(2) provides, in summary, that if an employee dies on or after his required beginning date without having designated a beneficiary, then post-death distributions must be made over the remaining life expectancy of the employee determined in accordance with paragraph (c)(3) of A-5.

Section 1.401(a)(9)-5, Q&A-5(c)(3) provides, in general, that with respect to an employee who 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.

Applying these rules to your ruling request, Decedent's estate was named as the beneficiary of IRA X at the time of Decedent's death. Under § 1.401(a)(9)-4, Q&A-3, an estate cannot be a "designated beneficiary" for purposes of section 401(a)(9). Accordingly, there was no "designated beneficiary" of IRA X for purposes of section 401(a)(9).

In addition, although the Court order changed the beneficiary of IRA X under State law, the order cannot create a "designated beneficiary" for purposes of section 401(a)(9). Courts have held that the retroactive reformation of an instrument is not effective to change the tax consequences of a completed transaction. For example, the Tax Court considered the impact of a judicial reformation of a trust agreement for tax law purposes in *Estate of La Meres v. Commissioner*, 98 T.C. 294 (T.C. 1992). In *La Meres*, a state probate court order approved the post-death amendment of a trust to eliminate a provision that caused adverse estate tax results, and held that such amendment was retroactively effective as of the date of the decedent's death. The Tax Court held that such reformation was not effective for tax purposes, explaining that:

> This and other courts have generally disregarded the retroactive effect of State court decrees for Federal tax purposes. See *Van Den Wymelenberg v. United States, 397 F.2d 443, 445 (7th Cir. 1968)*; *Straight Trust v. Commissioner, 245 F.2d 327, 329-330 (8th Cir. 1957)*, affd. *24 T.C. 69 (1955)*; *Estate of Nicholson v. Commissioner, 94 T.C. 666, 673 (1990)*; *Fono v. Commissioner, 79 T.C. 680, 695 (1982)*, affd. without published opinion *749 F.2d 37 (9th Cir. 1984)*; *American Nurseryman Publishing Co. v. Commissioner, 75 T.C. 271, 275 (1980)*, affd. without published opinion *673 F.2d 1333 (7th Cir. 1981)*. . . . While we will look to local law in order to determine the nature of the interests provided under a trust document, we are not bound to give effect to a local court order that modifies the dispositive provisions of the document after respondent has acquired rights to tax revenues under its terms. *Estate of Nicholson v. Commissioner*, *supra* at 673; *American Nurseryman Publishing Co. v. Commissioner*, *supra* at 275; *Estate of Hill v. Commissioner*, 64 T.C. 867, 875-876 (1975), *affd. in an unpublished opinion* 568 F.2d 1365 (5th Cir. 1978). As the Seventh Circuit explained in *Van Den Wymelenberg v. United States, supra at 445*:
>
> > Were the law otherwise there would exist considerable opportunity for "collusive" state court actions having the sole purpose of reducing federal tax liabilities. Furthermore, federal tax liabilities would remain unsettled for years after their assessment if state courts and private persons were empowered to retroactively affect the tax consequences of completed transactions and completed tax years.

La Meres at 311-312.

In summary, because Decedent's estate was named as the beneficiary of IRA X at the time of Decedent's death and an estate cannot qualify as a "designated beneficiary" for purposes of section 401(a)(9), IRA X did not have a "designated beneficiary." Because Decedent died after the required beginning date and without a "designated beneficiary," the assets of IRA X must be paid out over the applicable distribution period described in § 1.401(a)(9)-5, Q&A-5(c)(3).

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 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.

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. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

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

cc: