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March 05, 2019

### Legend

Date 1 =  
Date 2 =  
Date 3 =  
Trust =  
Decedent =  
Spouse =  
Daughter =  
State A =  
Court =

Dear :

This letter is in response to your letter dated July 19, 2018, as supplemented by your correspondence dated December 10, 2018 and February 26, 2019, submitted on your behalf by your authorized representative, in which you request rulings under section 401(a)(9) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the rulings requested:

Decedent established Trust, a living revocable trust, on Date 1. On Date 2, Decedent died after his "required beginning date" as that term is defined in section 401(a)(9)(C). Decedent was survived by Spouse and Daughter. Spouse is older than Daughter, and Decedent was older than Spouse when he died. Upon Decedent's death, Trust became irrevocable and was divided into a marital deduction subtrust ("Marital Trust"), a subtrust

for the benefit of Daughter (“Daughter’s Trust”), and a third subtrust (“Family Trust”). You represent that Marital Trust qualifies as a Qualified Terminable Interest Property under section 2056(b)(7). At the time of his death, Decedent was the owner of Roth IRA, a Roth Individual Retirement Account. Pursuant to the beneficiary designation form for Roth IRA, Marital Trust is the named beneficiary of Roth IRA.

Article IV.A. of Trust provides that Spouse is the primary beneficiary of Marital Trust.

Article IV.D. of Trust provides that, at the death of Spouse, Marital Trust assets pass to Daughter’s Trust.

Article VII.E. of Trust provides that, at the death of Daughter, Daughter’s Trust assets are to be divided in separate trust shares for Daughter’s then living descendants.

Article XV.B. of Trust provides that, for any subtrust that is the beneficiary of a retirement plan (including an IRA) that can be paid minimum required distributions based on the life expectancy of the “Designated Plan Beneficiary”, the oldest individual beneficiary of such subtrust, determined as of September 30 of the calendar year following the Decedent’s death, is the Designated Plan Beneficiary of the subtrust for purposes of determining minimum required distributions from the retirement plan.

Article XV.E. of Trust provides that all amounts of any subtrust that is the beneficiary of a retirement plan under Article XV.B. of Trust are to be paid outright to the Designated Plan Beneficiary of the subtrust, and upon the death of the Designated Plan Beneficiary, this paragraph shall cease to apply.

Article XV.F. of Trust provides procedures for an independent trustee to make an irrevocable election in writing to render Article XV.E. inoperative to a subtrust that is the beneficiary of a retirement plan, thereby allowing the subtrust to accumulate assets in the subtrust rather than paying all amounts outright to the Designated Plan Beneficiary. Article XV.F. of Trust also limits potential beneficiaries of such a subtrust when such an election is made to individuals who are not older than the Designated Plan Beneficiary and eliminates any potential beneficiaries that are non-individuals.

Article XVI of Trust provides that the provisions of the trust shall be governed under the laws of State A.

No independent trustee was appointed at the time of Decedent’s death, and no independent trustee made the election described in Article XV.F. of Trust with respect to Marital Trust. On Date 3, Court in State A issued an order ratifying a settlement agreement to allow Daughter to act as an independent trustee of Marital Trust and retroactively elect to treat Marital Trust as an accumulation trust as if the election under Article XV.F. were timely made.

You have represented that: 1) Trust is valid under the laws of State A, 2) a copy of the trust was provided to the Roth IRA custodian prior to October 31 of the year following the death of the Decedent, and 3) Trust became irrevocable upon the death of the Decedent.

Based on the above facts and representations, you, through your authorized representative, requested the following rulings:

- 1) Spouse will be treated as the designated beneficiary of Roth IRA for purposes of section 401(a)(9) pursuant to § 1.401(a)(9)-4, Q&A-5; and
- 2) RMDs from Roth IRA will be calculated based on the life expectancy of Spouse. Under this method, the first-year RMD is determined based on Spouse's corresponding life expectancy factor in the year of the first distribution under the Single Life Table. For succeeding years, this initial factor is reduced by one each year.

#### Law

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 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 will 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 § 1.401(a)(9)-4, Q&A-1, from the trust instrument; and (4) relevant documentation has been timely provided to the plan administrator.

Section 1.401(a)(9)-4, Q&A-6(b), provides, in relevant part, with respect to required minimum distributions after the death of an employee, that documentation sufficient to enable the plan administrator to identify beneficiaries of the plan must be provided by the trustee of the trust to the plan administrator by October 31 of the calendar year immediately following the calendar year in which the employee died.

Section 1.401(a)(9)-5, Q&A- 5(a), provides that if an employee dies on or after the employee's required beginning date and has a designated beneficiary, the applicable distribution period for minimum distributions for distribution calendar years after the distribution calendar year containing the employee's date of death is the greater of the life expectancy (determined in accordance with § 1.401(a)(9)-5, Q&A-5(c)) of the designated beneficiary or the employee.

Section 1.401(a)(9)-5, Q&A-5(c)(1), states that, except as provided in § 1.401(a)(9)-5, Q&A-5(c)(2), with respect to minimum distributions paid to a designated beneficiary, the applicable distribution period measured by the beneficiary's remaining life expectancy is determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following 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 immediately following the calendar year of the employee's death.

Section 1.401(a)(9)-5, Q&A-5(c)(2), states that, with respect to minimum distributions paid to a surviving spouse of the employee who 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-7(a)(1), states that if more than one individual is designated as a beneficiary with respect to an employee, the designated 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), states 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 whether a person other than an individual is designated as a beneficiary.

Section 1.401(a)(9)-5, Q&A-7(c), states that a person will not be considered a beneficiary for purposes of determining who is the beneficiary with the shortest life expectancy, or whether a person who is not an individual is a beneficiary, merely because the person could become the successor to the interest of one of the employee's beneficiaries after that beneficiary's death.

Section 408(a)(6) provides that, under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) shall apply to the distribution from an IRA of the entire interest of an individual for whose benefit the IRA 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.

Section 1.408-8, Q&A-1(b), provides, as relevant, 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 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.

Section 1.408A-6, Q&A-14, provides, in general, that Roth IRAs are subject to the required minimum distribution rules that apply after the death of the IRA owner under section 401(a)(9) and the accompanying Treasury Regulations.

#### Analysis

With regard to your first ruling request, because Marital Trust is the beneficiary of Roth IRA, we must determine whether the requirements of a “see-through” trust under § 1.401(a)(9)-4, Q&A-5, have been met with respect to Marital Trust so that the beneficiaries of Marital Trust are treated as designated beneficiaries for purposes of section 401(a)(9). You have represented that Trust is valid and irrevocable and that the required documentation has been provided, in accordance with § 1.401(a)(9)-4, Q&A-5(b)(1), (2), and (4). Pursuant to § 1.401(a)(9)-4, Q&A-5(b)(3), the beneficiaries of Trust who are beneficiaries with respect to Trust’s interest in the employee’s benefit must also be identifiable within the meaning of § 1.401(a)(9)-4, Q&A-1 from the trust instrument.

Marital Trust is the named beneficiary of Roth IRA. Pursuant to Article XV.E. of Trust, unless the election of Article XV.F. of Trust is properly made, all amounts withdrawn from Roth IRA are to be paid outright to Spouse, and upon the death of Spouse, Article XV.E. of Trust shall cease to apply. Thus, unless the election is made, there can be no accumulation in Trust of assets of Roth IRA on behalf of any other beneficiary. In such a case, pursuant to § 1.401(a)(9)-5, Q&A-7(c), the beneficiaries of Trust are identifiable because Spouse is the sole designated beneficiary of Roth IRA.

Although the order by Court ratifying the settlement agreement retroactively effectuated an election with respect to Trust under State A law, the order does not retroactively change the provisions that applied at the time of Decedent’s death 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.

Thus, notwithstanding Court's subsequent order, because the election to treat Marital Trust as an accumulation trust under Article XV.F. was not timely made for purposes of section 401(a)(9), Spouse is treated as the sole designated beneficiary of Roth IRA for purposes of the required minimum distribution (RMD) rules of section 401(a)(9) pursuant to § 1.401(a)(9)-4, Q&A-5.

With regard to your second ruling request, as discussed above, Spouse is the sole designated beneficiary of Roth IRA for purposes of the RMD rules. Therefore, § 1.401(a)(9)-5, Q&A-5(c)(2) applies to determine the distribution period for RMDs. However, because the rule of § 1.401(a)(9)-5, Q&A-5(c)(1) produces distributions that are no less rapid than the method under § 1.401(a)(9)-5, Q&A-5(c)(2), distributions that satisfy § 1.401(a)(9)-5, Q&A-5(c)(1) would meet the minimum distribution requirements.

## Rulings

Thus, with respect to your ruling requests, we conclude as follows:

- 1) Spouse is treated as the designated beneficiary of Roth IRA for purposes of determining the distribution period under section 401(a)(9) pursuant to § 1.401(a)(9)-4, Q&A-5; and
- 2) RMDs from Roth IRA are calculated based on the life expectancy of Spouse. Because Spouse is treated as the sole designated beneficiary, RMDs under section 401(a)(9) are determined pursuant to the rule of § 1.401(a)(9)-5, Q&A-5(c)(2). Nevertheless, distributions from Roth IRA that satisfy the rule of § 1.401(a)(9)-5, Q&A-5(c)(1), with the first-year distribution determined based on Spouse's corresponding life expectancy factor in the year of the first distribution under the Single Life Table and, for succeeding years, the initial factor reduced by one each year, would meet the minimum distribution requirements because this method produces distributions that are greater than or equal to the applicable RMDs under section 401(a)(9).

The rulings contained in this letter ruling 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. 2019-1, 2019-1 I.R.B. 1, § 7.01(16)(b). While this office has not verified any of the material submitted in support of the request for a letter 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. 2019-1, § 11.05.

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 ruling.

This letter ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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 ruling is being sent to your authorized representative.

A copy of this letter ruling must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Neil Sandhu  
Senior Technician Reviewer  
Qualified Plans, Branch 1  
(Employee Benefits, Exempt Organizations, and  
Employment Taxes)

cc: