

Internal Revenue Service

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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:FIP:B04

PLR-152020-05

Date:

February 08, 2006

In Re:

Taxpayer =

Spouse =

Trust =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Amount X =

Dear

This is in response to your authorized representative's submission of Date 1, and subsequent submissions, requesting a ruling on the proper treatment of a distribution from an annuity under sections 72 and 1035 of the Internal Revenue Code.

FACTS

Taxpayer is an individual. On Date 2, a non-qualified Annuity (Annuity) was purchased and held by Trust, a revocable trust with Taxpayer and Spouse as Grantors and Trustees. Spouse died on Date 3. Upon the death of Spouse, Taxpayer asked the insurance company that issued the Annuity to exchange the Annuity in the Trust's name for an annuity in Taxpayer's name. The insurance company refused to do so.

On Date 4, the insurance company distributed the full amount of the Annuity, Amount X, to Trust.

REQUESTED RULING

For purposes of sections 72 and 1035 of the Code, whether Taxpayer may roll over or exchange the Annuity held by Trust for an annuity in Taxpayer's name even though the full amount of the annuity already has been distributed to Trust.

LAW AND ANALYSIS

Section 72 of the Code prescribes the tax treatment of amounts received under an annuity contract. Generally, section 72 provides that amounts received under an annuity contract other than as an annuity are includible in the recipient's gross income to the extent allocable to income on the contract. Section 1035(a)(3) of the Code provides that no gain or loss is recognized on the exchange of an annuity contract for another annuity contract. Section 1.1035-1 of the regulations provides that a tax-free exchange of an annuity contract for another annuity contract under 1035 of the Code is limited to cases where the same person or person is the obligee or obligees under the contract received in exchange as under the original contract. Neither section 1035 nor the regulations thereunder make any special provision for the purchase of an annuity contract with the proceeds received with respect to another contract.

Taxpayer argues that she should be permitted to "roll over" the proceeds from Annuity into another annuity contract, and cites as support several letter rulings in which the Service permitted such rollovers in the case of qualified annuities. We disagree, however, that a rollover may be effected under these facts. A rollover occurs when distributions from certain qualified retirement plans are contributed or deposited into another qualified plan within a 60-day time period. See, 26 C.F.R. section 1.402(c)-2, sections 402(c)(4), 403(a)(4), 403(b)(8), 408(d)(3)(A). The distribution of Amount X that Taxpayer received on Date 4 was from a nonqualified annuity. Therefore, no rollover could have occurred.

In the alternative, Taxpayer argues that she may use the proceeds she received under Annuity to purchase a second annuity contract, and treat the transaction as an exchange that qualifies as tax-free under the authority of section 1035. Section 1035, however, envisions an exchange of an annuity contract for another annuity contract, not a distribution under one annuity contract followed weeks or months later by the purchase of another. At this point, the insurance company's obligation under the Annuity has been satisfied in full by a cash distribution of the entire contract, the proceeds made payable to the Trust. Because the Trust is a Grantor Trust, the Trust's assets are the Taxpayer's assets. Accordingly, Taxpayer has received distribution of

the Annuity and there is no longer an annuity that can be exchanged for another annuity.

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.

A copy of this letter must be attached to any income tax return to which it is relevant. 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. 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,

/S/

Mark Smith
Chief, Branch 4
Office of Associate Chief Counsel
(Financial Institutions & Products)