

Internal Revenue Service

Number: **201936009**

Release Date: 9/6/2019

Index Number: 402.00-00, 402.01-00,
402.08-00, 402.08-05

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:EEE:EB:QP4
PLR-135169-18

Date:
May 29, 2019

In Re:

Legend

Decedent =
Plan =

State =
Taxpayer =

Dear :

This letter responds to your authorized representative's letter dated November 21, 2018, and supplemental correspondence received on April 24, 2019, requesting a ruling concerning your ability to roll over a distribution of your deceased spouse's account in the Plan into your individual retirement account, despite his account naming his estate as the beneficiary.

The following facts and representations have been submitted under penalties of perjury in support of your request:

Decedent was a participant in the Plan, and died before reaching age 70-1/2. You have submitted the Plan Document stating that the Plan was established by State under § 457(b) of the Internal Revenue Code. You have also submitted documentation stating that, prior to Decedent's death, he named his estate as the sole beneficiary of his account in the Plan. Taxpayer is Decedent's surviving spouse and is the executrix and sole beneficiary of his residual estate. Taxpayer states that no distributions have been made from Decedent's Plan account since Decedent's death.

Following Decedent's death, Taxpayer, as executrix and sole beneficiary of Decedent's residual estate (which included Decedent's Plan account), sought to roll over Decedent's account in the Plan to an IRA established and maintained in Taxpayer's name. However, the recordkeeper for the Plan disallowed the rollover because Decedent's estate, and not Taxpayer, was the named beneficiary of Decedent's account in the Plan.

You request the following rulings:

1. Taxpayer, the surviving spouse of Decedent, will be treated as having acquired any distribution from the Plan directly from the Decedent, and not the Decedent's estate.
2. Taxpayer is eligible to roll over distributions from the Plan to an IRA established and maintained in her name to the extent permitted by § 402(c)(9).
3. Taxpayer will not be required to include any amounts properly rolled over in her gross income for federal tax purposes for the calendar year in which the distribution and rollover occurred.

Section 457(b) defines an eligible deferred compensation plan as a plan established and maintained by an eligible employer that meets the requirements specified in such section.

Section 457(e)(1)(A) defines the term "eligible employer" as (A) a state, political subdivision of a state, and any agency or instrumentality of a state or political subdivision of a state.

Section 457(e)(16)(A) provides that in the case of an eligible deferred compensation plan established and maintained by an employer described in subsection (e)(1)(A), if any portion of the balance to the credit of an employee in such plan is paid to such employee in an eligible rollover distribution (within the meaning of § 402(c)(4)), the employee transfers any portion of the property such employee receives in such distribution to an eligible retirement plan described in § 402(c)(8)(B), and, in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 457(e)(16)(B) provides that the rules of paragraphs (2) through (7), (9), and (11) of § 402(c) and § 402(f) shall apply for purposes of subparagraph (A).

Section 402(c)(2) provides that the maximum amount of an eligible rollover distribution shall not exceed the portion of such distribution which is otherwise includible in gross income, provided that such limitation does not apply to (1) amounts transferred in a direct trustee-to-trustee transfer to a qualified trust or an annuity contract described in

§ 403(b) that meets certain conditions; or (2) amounts transferred to an eligible retirement plan described in clause (i) or (ii) of § 402(c)(8)(B).

Section 402(c)(3) provides that the exclusion from gross income 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) defines “eligible rollover distribution” as any distribution to an employee of all or a portion of the balance to the credit of an employee in a qualified trust; except that the terms shall not include-

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancies or the joint life expectancies) of the employee and the employee’s designated beneficiary, or for a period of 10 years or more,

(B) any distribution to the extent the distribution is required under § 401(a)(9), and

(C) any distribution which is made upon hardship of the employee.

Section 402(c)(8)(B) defines eligible retirement plan as (i) an individual retirement account described in § 408(a), (ii) an individual retirement annuity described in § 408(b) (other than an endowment contract), (iii) a § 401(a) qualified retirement plan, (iv) an annuity plan described in § 403(a), (v) an eligible deferred compensation plan described in § 457(b) which is maintained by an eligible employer described in § 457(e)(1)(A), and (vi) an annuity contract described in § 403(b).

Section 402(c)(9) provides that if a distribution attributable to an employee is paid to the spouse of the employee after the employee’s death, § 402(c) will apply to such distribution in the same manner as if the spouse were the employee.

In this case, Decedent’s estate is the beneficiary of his account in the Plan. Taxpayer, Decedent’s surviving spouse, is the executrix and sole beneficiary of Decedent’s residual estate. Taxpayer proposes to roll over Decedent’s balance in the Plan to an IRA established and maintained in her name via direct rollover. Under these circumstances, Decedent’s account under the Plan may be treated as paid from the Plan to the Decedent’s spouse for purposes of § 402(c).

Accordingly, we conclude that:

1. Taxpayer may be treated as having received the distribution from the Plan for purposes of § 402(c);

2. Taxpayer is eligible to roll over the distribution from the Plan to an IRA established and maintained in her name; and

3. Taxpayer will not be required to include the amount distributed in her gross income for federal tax purposes for the calendar year in which the distribution and rollover occur.

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, as specified in Rev. Proc. 2019-1, 2019-1 I.R.B. 1, § 7.01(16)(b). This office has not verified any of the material submitted in support of the request for 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.

This letter ruling is directed only to the taxpayer who requested 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 is being sent to your authorized representative.

A copy of this letter 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,

Jason Levine
Senior Technician Reviewer
Qualified Plans Branch 4
Office of Associate Chief Counsel
(Employee Benefits, Exempt Organizations,
and Employment Taxes)