



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201437034

JUN 18 2014

Uniform Issue List: 401.06-00, 4974.01-00

Legend:

Decedent A = ***

Taxpayer B = ***

Individual C = ***

Individual D = ***

IRA W = ***

Annuity X = ***

Annuity Y = ***

Annuity Z = ***

Financial Institution = ***

Court = ***

Dear * * *,

This is in response to your request dated February 1, 2011, as supplemented by correspondence dated January 29, 2013, August 22, 2013, August 23, 2013, November 15, 2013, November 21, 2013, and January 30, 2014, in which you request rulings under sections 401(a)(9) and 4974 of the Internal Revenue Code (the "Code") related to the disposition of the assets of an IRA of Decedent A.

The following facts and representations have been submitted under penalties of perjury in support of the rulings requested. Decedent A was the owner of IRA W. Taxpayer B was a long-time friend of Decedent A. Individual C was the former wife of Decedent A. Within IRA W, Decedent A purchased Annuity X, Annuity Y, and Annuity Z.

Decedent A had originally designated Taxpayer B as the primary beneficiary of IRA W, Annuity X, Annuity Y, and Annuity Z. Additionally, pursuant to a divorce judgment, Decedent A was required to maintain Individual C as the beneficiary of a percentage of some of the funds used to fund IRA W.

After Decedent A underwent a major surgery, Individual D began to partly live at Decedent A's residence to care for his medical needs. Decedent A later changed the beneficiary designations for Annuity X to 50% for Taxpayer B and 50% for Individual D, and for Annuity Y and Annuity Z to 100% for Individual D.

Decedent A died on January 20, 2006, at age 77, after his required beginning date.

Individual D received her entire interest in Annuity X in 2006. Taxpayer B and Individual C filed suit in the Court challenging the beneficiary designation of Individual D, resulting in the freezing of all of the assets of IRA W, including the undistributed assets of Annuity X, Annuity Y, and Annuity Z.

During the course of the litigation, Financial Institution, which issued Annuity Z, requested that it be allowed to pay the assets from Annuity Z into the Court, for the Court to hold pending the outcome of the litigation. Pursuant to an order of the Court, the assets from Annuity Z were eventually transferred from Financial Institution to IRA W.

On June 16, 2010, a stipulation of settlement was signed by Taxpayer B, Individual C, and Individual D, and approved by the Court, whereby Individual D released any claims to any undistributed assets of IRA W, including Annuity X, Annuity Y, and Annuity Z. Prior to the June 16, 2010, stipulation of settlement, Individual D had not disclaimed entitlement to IRA W, Annuity X, Annuity Y, or Annuity Z. After the stipulation was signed, you represent that there were delays getting final waivers from Individual D as well as the need to make a final allocation determination between Taxpayer B and Individual C. Taxpayer B was however able to receive her entire interest in Annuity X in 2010. Taxpayer B received her entire interest in Annuity Y in 2013.

While the litigation was still ongoing and until the allocation between Taxpayer B and Individual C was determined, you represent that required minimum distributions were not able to be made to Taxpayer B for 2007, 2008, and 2009, and that less than the full amount of required minimum distributions were made in 2010. While awaiting the outcome of this ruling request, Taxpayer B received required minimum distribution payments for 2011, 2012, and 2013.

Based on the facts and representations, you request the following rulings:

(1) that the Internal Revenue Service (the "Service") allow Taxpayer B to begin taking her required minimum distributions for IRA W (which includes Annuity X and Annuity Y, and the proceeds of Annuity Z) in the year in which this ruling request is granted rather than in 2007, which is the year after Decedent A's death;

(2) that the Service waive the excise tax under section 4974(a) of the Code for Taxpayer B for failure to take the required minimum distributions for 2007, 2008, 2009, and 2010 for IRA W (which includes Annuity X and Annuity Y, and the proceeds of Annuity Z); and

(3) that Taxpayer B may receive required minimum distributions from IRA W (which includes Annuity X and Annuity Y, and the proceeds of Annuity Z) based upon her life expectancy, rather than the life expectancy of Individual C.

With respect to your first and second rulings, section 401(a)(9)(A) of the Code provides that a trust shall not constitute a qualified trust under the Code 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)(B)(i) of the Code 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 of such interest 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 408(a)(6) and (b)(3) of the Code provides that rules similar to the rules of section 401(a)(9) of the Code shall apply to distributions from an IRA.

Section 4974(a) of the Code provides that if the amount distributed during the taxable year of the payee under any qualified retirement plan (defined under such section to

include IRAs) is less than the required minimum distribution (under sections 401(a)(9), 408(a)(6), and 408(b)(3) of the Code) for such taxable year, a tax equal to 50% of the amount by which such required minimum distribution exceeds the actual amount distributed during the taxable year is imposed and paid by the payee.

Section 4974(d) of the Code provides, in part, that if the taxpayer establishes that the failure to distribute the required minimum distribution during any taxable year was due to reasonable error and reasonable steps are being taken to remedy the shortfall, the Secretary may waive the 50% excise tax imposed by section 4974(a) of the Code for the taxable year.

You have represented that because litigation was still ongoing and there were further delays in getting final waivers and in determining the allocation between Taxpayer B and Individual C, the required minimum distributions were not able to be made to Taxpayer B for 2007, 2008, and 2009, and less than the full amount of required minimum distributions was made in 2010.

Therefore, with respect to your first and second ruling requests, we conclude that

- (i) pursuant to section 4974(d) of the Code, it was due to a reasonable error that required minimum distributions were not able to be fully made to Taxpayer B for 2007, 2008, 2009, and 2010 related to IRA W;
- (ii) pursuant to section 4974(d) of the Code, reasonable steps to remedy the shortfall would be for Taxpayer B to take the shortfall in required minimum distributions for 2007, 2008, 2009, and 2010 related to IRA W by the end of 2014; and
- (iii) assuming Taxpayer B does take the shortfall in required minimum distributions for 2007, 2008, 2009, and 2010 related to IRA W by the end of 2014, the Service hereby waives the 50% excise tax imposed on Taxpayer B under section 4974(a) for the shortfall in those years related to IRA W.

We note that, generally, a taxpayer may apply for a waiver of the tax imposed under section 4974(a) by completing IRS Form 5329 and attaching it to his or her tax return. Taxpayer B should include a copy of this letter ruling with her Form 5329.

With respect to your third ruling request, as stated above sections 401(a)(9)(A)(ii), 401(a)(9)(B)(i), 408(a)(6), and 408(b)(3) of the Code, provide for the required minimum distributions rules for IRAs if distribution of the IRA owner's interest has begun and the IRA owner has died before his entire interest has been distributed.

Section 401(a)(9)(E) of the Code provides that the term "designated beneficiary" means any individual designated as a beneficiary by the employee.

Section 1.401(a)(9)-4 of the Final Income Tax Regulations ("Regulations"), Q&A-1, provides that a designated beneficiary is an individual designated under the plan, either by the terms of the plan, or by an affirmative election by the employee specifying the

beneficiary, who is entitled to a portion of the plan's benefit, contingent on the participant's death or other specified event. The fact that an employee's interest under the plan passes to a certain individual under a will or otherwise under applicable state law does not make that individual a designated beneficiary unless the individual is designated a beneficiary under the plan.

Section 1.401(a)(9)-4 of the Regulations, Q&A-4(a), provides that in order to be a designated beneficiary, that beneficiary must be a beneficiary as of the date of the employee's death. The designated beneficiary will generally 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 death. Consequently, any person who was a beneficiary as of the date of the employee's death, but is not a beneficiary as of the September 30 of the following calendar year (e.g., because the person receives the entire benefit to which the person is entitled before that September 30) is not taken into account in determining the employee's designated beneficiary for purposes of determining the distribution period for required minimum distributions after the employee's death. Accordingly, if a person disclaims entitlement to the employee's benefit, pursuant to a disclaimer that satisfies section 2518 of the Code by that September 30 thereby allowing other beneficiaries to receive the benefit in lieu of that person, the disclaiming person is not taken into account in determining the employee's designated beneficiary.

Section 1.401(a)(9)-5 of the Regulations, Q&A-5(a), provides that if an employee dies after distribution has begun (generally on or after the employee's required beginning date), in order to satisfy section 401(a)(9)(B)(i), the applicable distribution period for the distribution calendar years after the distribution calendar year containing employee's date of death is, if the employee has a designated beneficiary as of the date determined under section 1.401(a)(9)-4 of the Regulations, Q&A-4, the longer of the remaining life expectancy of employee's designated beneficiary or the remaining life expectancy of the employee.

Section 1.408-8 of the Regulations, Q&A-1(a), provides that, in order to satisfy section 401(a)(9) of the Code for purposes of determining required minimum distributions for IRAs, the rules of section 1.401(a)(9)-1 through 1.401(a)(9)-9 of the Regulations must be applied, except as otherwise provided in section 1.408-8.

Section 1.408-8 of the Regulations, Q&A-9, provides, in part, that the required minimum distribution must be calculated separately for each IRA.

You have represented that at the time of Decedent A's death, the beneficiary designation for Annuity X was 50% for Taxpayer B and 50% for Individual D, and the beneficiary designations for Annuity Y and Annuity Z were 100% for Individual D. You have also represented that Individual D received her entire interest in Annuity X in 2006, but that she did not disclaim her interest in Annuity Y and the proceeds of Annuity Z until 2010.

Therefore with respect to your third ruling request, we conclude that, since Individual D received her entire interest in Annuity X prior to September 30th of the year following Decedent A's death, Taxpayer B was the designated beneficiary of Annuity X for purposes of determining the distribution period for required minimum distributions after Decedent A's death, pursuant to section 1.401(a)(9)-4 of the Regulations, Q&A-4. We note that Taxpayer B received her entire interest in Annuity X in 2010.

We also conclude that, since Individual D did not disclaim her interest in Annuity Y and the proceeds of Annuity Z prior to September 30 of the year following Decedent A's death, Individual D was the designated beneficiary for Annuity Y and Annuity Z solely for purposes of determining the distribution period for required minimum distributions after Decedent A's death pursuant to section 1.401(a)(9)-4 of the Regulations, Q&A-4. Accordingly, Taxpayer B may receive minimum distributions related to her allocated interest in Annuity Y and Annuity Z based upon the life expectancy of Individual D.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative. If you wish to inquire about this ruling, please contact ***** at (***) ***-****. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Jason Levine, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose

cc: ***