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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Significant Index No.: 401.06-00

Contact Person:

Telephone Number:

T:EP:RA:T2

Date: DEC 21

LEGEND

Decedent =

Beneficiary A =

Beneficiary B =

Court E =

Association M =

Fund N =

Account X =

Account Y =

Dear

This is in response to your request for a private letter ruling dated . In support of your request, you have submitted the following facts and representations.

Decedent was an educator who had two tax-sheltered annuity contracts under section 403(b) of the Internal Revenue Code ("Code"), Account X and Account Y, with Association M and Fund N. The designated beneficiaries on Account X and Account Y are the Decedent's two children, Beneficiary A (her son) and Beneficiary B (her daughter). The beneficiary designation form, dated , as submitted by your authorized representative, states that Beneficiary A is entitled to fifty percent of the amounts in Accounts X and Y, and that Beneficiary B is entitled to fifty percent of the amounts in Accounts X and Y.

288

Decedent was born on January 6, 1934. In a ruling dated October 5, 1999, Court E declared Decedent dead as of November 10, 1997, the date on which Beneficiary A filed a missing person report with local authorities. Until Court E's ruling as to a declaration of death, Decedent was presumed alive.

Decedent never received any benefits from Account X and Account Y. You represent that the Decedent's section 403(b) annuity contracts with Association M and Fund N permit her beneficiaries to elect lifetime annuities in accordance with section 401(a)(9)(B)(iii) of the Code.

Based on the above, you request the following letter ruling:

The date of the court's decision declaring Decedent dead, namely, October 5, 1999, be considered equivalent to the date of death for the limited purpose of determining distribution elections relating to Account X and Account Y of Decedent, so that Beneficiary A would have until December 31, 2000, to make his election of an annuity for his life.

Section 401(a)(9)(A) of the Code 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) of the Code 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 employee attains age 70 ½.

Section 401(a)(9)(B)(ii) of the Code provides that a trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), the entire interest of the employee will be distributed within 5 years after the death of such employee.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A C-2, provides that, in order to satisfy the five-year rule in section 401(a)(9)(B)(ii), the employee's entire interest must be distributed as of December 31 of the calendar year which contains the fifth anniversary of the date of the employee's death.

Section 401(a)(9)(B)(iii) of the Code provides an exception to the above referenced five-year rule. Under the exception, any portion of an employee's interest payable to a designated

beneficiary which is to be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary) may be so distributed beginning not later than 1 year after the date of the employee's death or such later date as the Secretary may by regulations prescribe.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A D-4, provides, in relevant part, that for purposes of calculating the distribution period described in section 401(a)(9)(B)(iii) or (iv), the designated beneficiary will be determined as of the employee's date of death. If, as of the employee's death, there is no designated beneficiary under the plan with respect to that employee, distribution must be made in accordance with the five-year rule in section 401(a)(9)(B)(ii).

Section 1.401(a)(9)-1 of the proposed regulations, Q&A C-3(a) provides that, in order to satisfy the exception to the five-year rule for nonspouse beneficiaries under section 401(a)(9)(B)(iii), distributions must commence on or before December 31 of the calendar year immediately following the calendar year in which the employee died.

Decedent, on the date Court E declared her dead, had not reached her required beginning date under section 401(a)(9)(C) of the Code. Until the Court E decision dated October 5, 1999, Decedent was presumed alive. Between November 10, 1997 and October 5, 1999, Beneficiary A did not have the option of electing a method of distribution, and was prevented from electing a method of distribution from Decedent's Account X and Account Y in accordance with section 401(a)(9)(B)(iii) of the Code due to Court E's presumption that Decedent was alive until determined otherwise.

Beneficiary A is a nonspouse beneficiary. As such, Beneficiary A must begin to receive distributions from Account X and Account Y on or before December 31 of the calendar year immediately following the calendar year in which the Decedent died in accordance with section 401(a)(9)(B)(iii) of the Code. Until October 5, 1999, Decedent was presumed to be alive. The Court E declaration recognizing the Decedent's death is dated October 5, 1999. Beneficiary A's right to fifty percent of the amounts in Account X and Account Y could not be recognized on or before October 5, 1999.

Therefore, with respect to your ruling, we conclude, for the limited purpose of selecting a distribution option under the section 403(b) annuity contracts offered by Association M and Fund N, that the date of Court E's decision declaring Decedent dead, namely October 5, 1999, is considered equivalent to the date of death. For the limited purpose of determining distribution elections relating to Account X and Account Y of Decedent, Beneficiary A, a designated beneficiary, would have until December 31, 2000 to elect to receive his interest in Account X and Account Y over a period that does not exceed Beneficiary A's life or over a period not extending beyond Beneficiary A's life expectancy.

This ruling is based upon the assumption that Account X and Account Y as sponsored by Association M and Fund N meet the requirements of section 403(b) of the Code.

This ruling 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 by others as precedent.

Pursuant to a power of attorney on file in this office, a copy of this letter ruling is being sent to your authorized representative.

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd
Manager Employee Plans Technical Group 2
Tax Exempt and Government Entities
Division

Enclosures:
Deleted copy of letter ruling
Notice of intention to disclose