Internal Revenue Service

Department of the Treasury

Washington, DC 20224 200113032

U/L: 403.00-00
401.00-00

contact Person:

Telephone Number:

In Reference to:
T:EP:RA:T2

Date:

3 2001

Legend

Company R =
Individual A =
. Individual B =
Individual C =
Individual D =
Individual E =
Individual F =
Individual G =
Date H =
Date I =
Date J =
Date K =
Date L
Date M =
Date N =
Date 0 =
Date P =
Date Q
Date R =

Dear :

This is in response to the ruling request dated May 2, 2000, as supplemented by letters dated October 5, 2000, and November 13, 2000, in which your authorized representative has requested rulings on your behalf concerning the required minimum distributions from contacts described in section 403(b) of the Internal Revenue Code owned by Individual A at the time of his death and held by Company R.

Your authorized representative has submitted the following facts and representations:

Individual A owned 403(b) contracts with Company R prior to his required beginning date, at his required beginning date, and at the date of his death. Individual A's date of birth was Date H. He attained age 70 on Date I, and age 70½ on Date J. His required beginning date with respect to the commencement of required minimum distributions from the 403(b) contracts is Date K. Individual A's date of death is Date L.

Individual A signed Company R's form entitled "Authorization to Begin Distribution Option Payments" and on the form, designated six beneficiaries of 403(b) contracts, Individuals B, C, D, E, F, and G. Their birth dates are respectively Date M, Date N, Date 0, Date P, Date Q, and Date R.

Individual B is the former spouse of Individual A and her date of birth is Date M. The remaining beneficiaries are the offspring of Individual A. As of Individual A's required beginning date of Date K, Individual B was the oldest designated beneficiary of Individual A's 403(b) contracts.

Also, on the form "Authorization to Begin Minimum Distribution Option Payment," Individual A elected to receive the required minimum distributions from the 403(b) contracts held by Company R under the following options: 1. No calculation beneficiary and 2. The calculation method is the Recalculation Method. The form provided as an alternative that Individual A could have received payments over his life and beneficiary's combined life expectancy. In effect, Individual A elected to receive distributions during his lifetime over his single, recalculated life expectancy.

Based on these facts and representations, the following rulings are requested:

1. That each of the six beneficiaries mentioned above are designated beneficiaries for purposes of section 401(a)(9) of the Code with respect to the 403(b) contracts owned by Individual A.

2. That each of the six beneficiaries were timely designated on the 403(b) contracts owned by Individual A at his required beginning date.

3. That with respect to Individual A's 403(b) contracts, Individual A's use of the single recalculated life expectancy in determining his required minimum distributions during his lifetime does not preclude the use of the remaining tern-certain life expectancy of the oldest designated beneficiary, Individual B, commencing in the calendar year after the death of Individual A.

4. That commencing in the calendar year 2001 (the year after Individual A's date of death), the required minimum distributions to Individual B from her interest in Individual A's 403(b) contracts may be based upon the remaining term-certain life expectancy of Individual B.

5. That the remaining term-certain life expectancy that may be used by Individual B in

determining her required minimum distributions from her interest in Individual A's 403(b) contracts for each year after the calendar year 2001 shall be reduced by one.

Section 403(b) of the Code provides for the taxability of a beneficiary under annuities purchased by section 501(c)(3) organizations or public schools. Section 403(b)(10) states, in pertinent part, that under regulations prescribed by the Secretary, this subsection shall not apply to any 403(b) annuity contact unless requirements similar to the requirements of section 401(a)(9) are met.

Section 1.403(b)-2 Q&A 1 of the proposed Income Tax Regulations provides, in pertinent part, that contracts described in section 403(b) of the Code are subject to the distribution rules provided in section 401(a)(9).

Section 401(a)(9)(A)(ii) of the Code provides, in pertinent part, that a trust shall not constitute a qualified trust unless the plan provides that the entire interest of each employee 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. Section 401(a)(9)(C) defines, in pertinent part, the required beginning date as April 1 of the calendar year following the later of the year in which the employee attains age 70% or the calendar year in which the employee retires.

Section 401(a)(9)(B)(i) of the Code provides, in pertinent part, that if the employee dies after distribution of his or her interest has begun, the remaining portion of such interest will continue to be distributed at least as rapidly as under the method of distribution being used prior to the employee's death.

Section 1.401(a)(9)-1, Q&A D-2 of the proposed regulations provides, in pertinent part, that designated beneficiaries are only individuals who are designated as beneficiaries 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 provides, by an affirmative election by the employee specifying the beneficiary.

Section 1.401(a)(9)-1, Q&A D-3 of the proposed regulations provides, in pertinent part, that for the purposes of calculating the distribution period described in section 401(a)(9)(A)(ii) of the Code, the designated beneficiary will be determined as of the employee's required beginning date.

The information submitted shows that Individual A made an affirmative election on May 12, 1997, that six individuals, namely Individuals B, C, D, E, F, and G, were his beneficiaries for his 403(b) contracts. This selection of his beneficiaries was completed before his required beginning date of Date K.

263

On this basis, we conclude with respect to the first and second ruling requests as follows:

1. That each of the six beneficiaries mentioned above are designated beneficiaries for purposes of section 401(a)(9) of the Code with respect to the 403(b) contracts owned by Individual A.

2. That each of the six beneficiaries were timely designated on the 403(b) contracts owned by Individual A at the required beginning date.

Section 1.401(a)(9)-1, Q&A E-l(a) of the proposed regulations provides, in pertinent part, that life expectancies are calculated using the employee's birthday (and the designated beneficiary's birthday) in the calendar year in which the employee attains age 70%.

Section 1,401(a)(9)-1, Q&A E-5(a) of the proposed regulations provides, in pertinent part, that if more than one individual is designated as a beneficiary with respect to an employee as of the applicable date for determining the designated beneficiary, the designated beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the distribution period.

Section 401(a)(9)(D) of the Code permits an employee and his spouse to recalculate their life expectancies annually. Section 1.401(a)(9)-1, Q&A E-S(a) of the proposed regulations, provides guidance on how an employee's life expectancy is recalculated and provides that upon the death of the employee, the recalculated life expectancy of the employee (or the employee's surviving spouse) will be reduced to zero in the calendar year following the calendar year of death. In any calendar year in which the last applicable life expectancy is reduced to zero, the plan must distribute the employee's entire remaining interest prior to the last day of such year in order to satisfy section 401(a)(9).

Section 1.401(a)(9)-1, Q&A E-S(b) of the proposed regulations provides, in pertinent part, that if the designated beneficiary is not the employee's spouse and the life expectancy of the employee is being recalculated annually, the applicable life expectancy for determining the minimum distribution for each distribution calendar year will be determined by recalculating the employee's life expectancy but not recalculating the beneficiary's life expectancy. Such applicable life expectancy is the joint life and last survivor expectancy using the employee's attained age as of the employee's birthday in the distribution year and an adjusted age of the designated beneficiary. The adjusted age of the designated beneficiary is determined as follows: First, the beneficiary's applicable life expectancy is calculated based on the beneficiary's attained age as of the beneficiary's birthday in the calendar year described in section 1.401(a)(9)-1, Q&A E-l reduced by one for each calendar year which has elapsed since that calendar year. The age (rounded if necessary to the higher age) in Table V of section 1.72-9 is then located which corresponds to the designated beneficiary's applicable life expectancy. Such age is the adjusted age of the designated beneficiary. As provided in section 1.401(a)(9)-1, Q&A E-8(a), upon the death of the employee, the life expectancy of the employee is reduced to zero in the calendar year following the calendar year of the employee's death. Thus, for determining the minimum distribution for such calendar year and subsequent calendar years, the applicable life expectancy is the applicable life expectancy of the designated beneficiary determined under this paragraph.

Since Individual A's life expectancy was being recalculated annually, upon his death, in accordance with section 1.401(a)(9)-1, Q&A E-8(a) of the proposed regulations, his life expectancy was reduced to zero in the calendar year following the calendar year of death *(i.e.,* 2001). Although the annual distributions to Individual A from his annuities were calculated using his single life expectancy, upon his death his life expectancy was not the last applicable life expectancy because he timely designated his beneficiaries by his required beginning date in accordance with section 1.401(a)(9)-1, Q&A E-8(b). Therefore, pursuant to Q&A E-8(b) of section 1,401(a)(9)-1, for purposes of determining the minimum distribution in the calendar year after the death of Individual A, the applicable life expectancy is the life expectancy of the designated beneficiary as determined under that section.

Given that more than one individual was designated as a beneficiary with respect to Individual A as of Date K, pursuant to section 1.401(a)(9)-1, Q &A E-5(a)(l) of the proposed regulations, the beneficiary who is the oldest and, correspondingly, who has the shortest life expectancy, will be the designated beneficiary for purposes of determining the distribution period with respect to the 403(b) contracts that were owned by Individual A.

The information submitted shows that Individual B is the oldest of the designated beneficiaries. Therefore, she had the shortest life expectancy of all of the designated beneficiaries on Individual A's required beginning date. On this basis, as required by section 1.401(a)(9)-1, Q&A E-5(a) of the proposed regulations, her life expectancy will be used to determine the minimum distribution period under the 403(b) contracts, commencing in the calendar year 2001.

As noted in section 1.401(a)(9), E-8(b) of the proposed regulations, the beneficiary's applicable life expectancy is calculated based on the beneficiary's attained age as of the beneficiary's birthday in the calendar year that the employee attained age 70%. (See section 1.401(a)(9)-1 Q&A E-l(a)). The applicable life expectancy would be reduced by one for each year that has elapsed since the designated beneficiary's attained age as of the beneficiary's birthday in the calendar year in which the employee attained age 70½. Individual A became age 70% on Date J. Therefore, for the calendar year 2000 and all subsequent years, Individual B's remaining term-life expectancy for the required minimum distributions would be her age during the year Individual A became age 70½ reduced by one for each year that has elapsed since that date of that year.

265

On this basis, we conclude with respect to the third, fourth, and fifth ruling requests as follows:

3. That with respect to lndividual A's 403(b) contracts, Individual A's use of the single recalculated life expectancy in determining his required minimum distributions during his lifetime does not preclude the use of the remaining term-certain life expectancy of the oldest designated beneficiary, Individual B, commencing in the calendar year after the death of Individual A.

4. That commencing in the calendar year 2001 (the year after Individual A's date of death), the required minimum distributions to Individual B from her interest in Individual A's 403(b) contracts may be based upon the remaining term-certain life expectancy of Individual B.

5. That the remaining term-certain life expectancy that may be used by Individual B in determining her required minimum distributions from her interest in Individual A's 403(b) contracts for each year after the calendar year 2001 shall be reduced by one.

This ruling is based on the assumption that the annuity contracts owned by Individual A 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 Internal Revenue Code provides that it may not be used or cited by others as precedent.

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

Sincerely yours,

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

Enclosures:
Deleted Copy of this Letter
Notice of Intention to Disclose

266