

Lynch, Kristen

From: Rappaport, Sheryll
Sent: Wednesday, April 21, 2010 11:20 PM
To: Trusts & Estates Attorneys
Subject: FW:PLR 201008049 - Individual Convicted of Murdering Decedent Still Treated as Designated Beneficiary of Decedent's IRA Steve Leimberg's Employee Benefits and Retirement Planning Newsletter

From: stevesletters@leimbergservices.com
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Sent: Wednesday, April 21, 2010 10:20:34 PM
To: Rappaport, Sheryll
Subject: PLR 201008049 - Individual Convicted of Murdering Decedent Still Treated as Designated Beneficiary of Decedent's IRA Steve Leimberg's Employee Benefits and Retirement Planning Newsletter
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**Steve Leimberg's Employee Benefits and Retirement Planning Email Newsletter - Archive
 Message #525**

Date: 21-Apr-10
From: Steve Leimberg's Employee Benefits and Retirement Planning Newsletter
Subject: **PLR 201008049 - Individual Convicted of Murdering Decedent Still Treated as Designated Beneficiary of Decedent's IRA**

While state law may prohibit an individual who feloniously and intentionally kills an IRA owner from benefitting under the IRA, a murder conviction in and of itself does not have the effect of retroactively removing the individual as the designated beneficiary of the decedent's IRA as of the measuring date.

As such, an individual convicted of and imprisoned for the murder of the decedent will still be treated as the designated beneficiary of the decedent's IRAs despite the state law slayer statute treating him as predeceased for purposes of inheriting property from the decedent. The decedent's life expectancy should have been used to calculate required minimum distributions.

Bob Keebler and Jennifer Voigt provide **LISI** members with their analysis of PLR 201008049, which contains a fact pattern that reads as if it were ripped from the headlines.

Robert S. Keebler is the co-author "The Big IRA Book" with **Carol**

4/22/2010

Gonnella and Cecil Smith. This book is now complete and available for order, and is accompanied by a related 60-page, full color PowerPoint deck that can be used when making client presentations.

In essence, the book and accompanying CDs and PowerPoint give practitioners the knowledge and expertise they need to easily advise and guide their clients to the desired results in naming the beneficiaries of their IRAs and Qualified Plans. This book is unlike any other book in the country about beneficiary designations for retirement assets. Ordering information is here or you may call 800-955-0554. To learn more or preview the entire table of contents and some of the actual pages, please visit our website www.BIGIRABOOK.com For information about Robert S. Keebler's CDs, seminars on CD, or speaking engagements, please contact Lisa Chapa at (920) 739-3361 or lisa.chapa@bakertilly.com.

Robert Keebler and Phil Kavesh have teamed up and developed a number of new and exciting educational teleconferences. "Ultimate Roth IRA Training" is a three part series (April 21, 27 and 28) covers the "Basics" of Roth Conversions Planning, Advanced Roth IRA Planning and Special Estate Planning for Roth IRAs. Don't forget their teleconference titled "How Will the Healthcare Bill Impact your Clients' Taxes?" The new federal Healthcare legislation contains many complex income tax increases that will hit your clients if they don't plan properly. Join Bob and Phil (choice of dates April 8, 22 or 27) to learn the intricacies. For details on attending, contact Lisa Chapa at (920) 739-3361 or lisa.chapa@bakertilly.com.

Jennifer L. Voigt, CPA, JD is a consultant on the Financial and Estate Planning Team as part of the Strategic Tax Services Group at **Baker Tilly Virchow Krause, LLP**. She specializes in sophisticated estate planning as well as retirement distribution planning. She also prepares and submits Private Letter Rulings on behalf of clients and researches and prepares tax opinion letters. Jennifer's CPA license to practice is in Wisconsin and she is also a member of the State Bar of Wisconsin and the American Bar Association.

Here is their commentary:

EXECUTIVE SUMMARY:

An individual convicted of and imprisoned for the murder of the decedent will still be treated as the designated beneficiary of the decedent's IRAs despite the

state law slayer statute treating him as predeceased for purposes of inheriting property from the decedent. The decedent's life expectancy should have been used to calculate required minimum distributions.

FACTS:

"Tara" is the step-daughter and a beneficiary of the estate of "Dorothy", who died on Date 1, 1998. Dorothy was the owner of two IRAs. "Chuck" was the sole named beneficiary on the beneficiary designation forms for both IRAs.

Chuck was incarcerated and charged with Dorothy's murder. Tara asserts that applicable state law prohibits a murderer from inheriting from the murder victim, thus a petition was filed to ascertain Tara's interest in Dorothy's estate.

Tara's petition was taken off the calendar to allow the pending criminal proceedings against Chuck to be resolved. In the interim, the IRAs remained in the custody of the custodian with no distributions being made from those accounts.

Thereafter, Chuck was convicted of the second-degree murder of Dorothy and sentenced to fifteen years to life in prison. For the next several years, during the processing of a series of criminal proceedings and various appeals by Chuck, no IRA distributions were made.

On a later date, the state Supreme Court denied Chuck's petition for review and issued its remittitur. Subsequently, Tara filed a Request to Put Petition to Determine Interest and Entitlement to Distribution Back on Trial and Supplement to Petition to Determine Interest and Entitlement to Distribution. After another series of appeals and denials by the courts, Chuck's murder conviction became final and the Superior Court ordered Chuck barred from receiving any interest in the estate of Dorothy.

Further, the Superior Court ordered that Tara was entitled to a distribution of all property remaining in Dorothy's estate, including, in accordance with Dorothy's will, the interest in the IRAs.

However, the Executor was ordered to not distribute the remaining property of the estate, including the interest in the IRAs, to Tara until a final court order approving the final account and report by the Executor.

Subsequently, the Superior Court approved the final account and report by the Executor and ordered the Executor to distribute the remaining property of Dorothy's estate, including the interest in the IRAs to Tara. No amounts of the

IRAs were ever distributed to Chuck.

RULINGS GRANTED

Chuck, the imprisoned individual convicted of murdering the decedent, is the designated beneficiary of the IRAs held by Dorothy on the date of Dorothy's death, as well as on September 30 of the calendar year immediately following the calendar year of Dorothy's death. Therefore under the life expectancy rule of section 401(a)(9)(B)(iii) of the Code, the funds of the IRAs should have been distributed over the life of Dorothy (or over a period not exceeding Dorothy's life expectancy);

Due to the factual circumstances of Dorothy's murder and subsequent state court proceedings which prevented the Executor from distributing the funds of the IRAs prior to the court order, to the extent it is determined that the 50% excise tax imposed by section 4974(a) of the Code applies to Tara, as the distributee of the IRAs, for failing to take required minimum distributions, a waiver of such tax is proper.

IRS ANALYSIS

Treas. Reg. Sec. 1.401(a)(9)-4 Q&A 1 provides that a designated beneficiary is an individual designated under the plan, either by the terms of the IRA, or by an affirmative election by the IRA holder specifying the beneficiary, who is entitled to a portion of the IRA's benefit, contingent on the participant's death or other specified event. The fact that an IRA Holder's interest under the IRA 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 IRA.

Under Treas. Reg. Sec. 1.401(a)(9)-4, Q&A 4(a), in order to be a designated beneficiary, that beneficiary must be a beneficiary as of the date of the IRA Holder'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 IRA Holder'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 or because the beneficiary performs a qualified disclaimer of the IRA) is not taken into account in determining the IRA Holder's designated beneficiary for purposes of determining the distribution period for required minimum distributions after the IRA Holder's

death.

In this case, applicable state law provided that a person who feloniously and intentionally kills the decedent is not entitled to benefit under an IRA. Under the state law, the IRA is treated as becoming payable as though the murderer predeceased the decedent.

The Service noted that reaching a determination regarding the impact of Chuck's conviction of murdering Dorothy on the issues involved in Tara's ruling requests lies within the scope of section 401(a)(9) of the Code.

While the IRS accepted the representation that applicable state law treats Chuck as predeceasing Dorothy, it pointed out that Tara did not submit documentation establishing that under applicable state law, Chuck's conviction of murdering Dorothy had the effect of retroactively removing him as the designated beneficiary as of her date of death or as of September 30 of the calendar year after the calendar year of her death.

The IRS stated that although Chuck is not entitled to receive any interest in amounts attributable to the IRAs, it was clear that as of September 30 of the calendar year immediately following 1998 (the date for determining Dorothy's designated beneficiary), Chuck was alive, had not disclaimed his interest in the IRAs, was not subject to a final court judgment as to his guilt in the murder of Dorothy, and had not received any part of the interest in the IRAs. Accordingly, the IRS found that pursuant to Treas. Reg. 1.401(a)(9)-4, Q&A 4 (determining when a designated beneficiary is determined), Chuck was the designated beneficiary for purposes of determining the applicable distribution period.

The IRS went on to say that under the life expectancy rule of section 401(a)(9)(B)(iii) of the Code, the funds under the IRAs should have been distributed to Tara over the life of Dorothy (or over a period not exceeding Dorothy's life expectancy) beginning with the year after the year of Dorothy's death.

It is not clear to this author why Dorothy's life expectancy is to be used if Chuck was considered the designated beneficiary. While a person may choose between the youngest of the beneficiary or the decedent when determining which life expectancy to utilize, this rule only applies if a decedent dies after his or her required beginning date. See Treas. Reg. 1.401(a)(9)-5, Q&A 5(a).

However, the IRS points out that under Treas. Reg. Sec. 1.401(a)(9)-3, Q&A 1, if an employee/IRA holder dies before the employee's/IRA holder's required beginning date, the IRA is to be distributed either under the five year rule

(when no designated beneficiary exists) or over the life expectancy of the beneficiary. The IRS's mention of the rules applicable to a decedent dying before his/her required beginning date seems to indicate that Dorothy died before her required beginning date.

It would therefore appear that the proper life expectancy given the IRS' ruling on the designated beneficiary would be Chuck's life expectancy. However, this may have been a typo on the IRS's part because later in the ruling, when the IRS discussed the waiver of the excess accumulation penalty under IRC Sec. 4974, the IRS references using Chuck's life expectancy to calculate required minimum distributions.

The Service also noted that the ruling is limited to the ten (10) calendar years beginning the year after the year of Dorothy's death and ending with 2008 because the amounts were distributed from the IRAs to a non-IRA account in 2008.

IRC Sec. 4974 imposes a penalty on a taxpayer for failure to take their full required minimum distribution. The penalty is equal to 50% of any shortfall. Under IRC §4974(d), however, this additional tax may be waived if the taxpayer can establish that the shortfall in distributions was due to reasonable error and reasonable steps are being taken to remedy the shortfall.

The Service found that Tara had established, through the documentation submitted, including the various court orders delaying the determination of the recipient of, and the payment of, the amounts in the IRAs, that the failure to receive required minimum distributions was due to circumstances beyond her control. The Service further found that said circumstances gave rise to reasonable cause. Accordingly, the excise taxes under IRC Sec. 4974(a) imposed because of Tara's failure to receive the required minimum distributions from the IRAs were waived.

COMMENT:

The Service's analysis in this PLR highlights the Code and Regulation requirements that an individual must satisfy in order to qualify as a designated beneficiary. In this case, while state law may prohibit an individual who feloniously and intentionally kills an IRA owner from benefitting under the IRA, the murder conviction in and of itself does not have the effect of retroactively removing the individual as the designated beneficiary of the decedent's IRA as of the measuring date (i.e. date of death and September 30th of the calendar year following the year of death).

If the individual would have filed a qualified disclaimer (though presumably unlikely in this case), which satisfied section 2518 of the Code, the individual would not have been taken into account in determining the IRA owner's designated beneficiary. While there is obviously no planning that could have changed the outcome of this unfortunate case, it highlights the fact that the IRS does not have to (and often does not) follow state law in determining the federal income tax consequences to a particular transaction.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Bob Keebler

Jennifer Voigt

TECHNICAL EDITOR: BARRY PICKER

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