MEMO# 11374

November 2, 1999

# IRS RELEASES GUIDANCE ALLOWING A SURVIVING SPOUSE TO ROLL OVER A QUALIFIED PLAN ANNUITY TO AN IRA

[11374] November 2, 1999 TO: PENSION COMMITTEE No. 61-99 PENSION OPERATIONS ADVISORY COMMITTEE No. 51-99 RE: IRS RELEASES GUIDANCE ALLOWING A SURVIVING SPOUSE TO ROLL OVER A QUALIFIED PLAN ANNUITY TO AN IRA ______________________________________________________________________________ The Internal Revenue Service has recently released Private Letter Ruling 199940041 (the "PLR"), which permits a surviving spouse to make a tax-free rollover to an IRA, rather than continue to receive annual annuity payments from her deceased husband's qualified retirement plan. Under the facts of the PLR, the decedent was a participant in a qualified retirement plan and received required minimum distributions ("RMDs") until his death at age 80. The decedent and his wife had elected to receive a lump sum equivalency of a single life annuity, paid out over their joint life expectancies. The surviving spouse, and sole beneficiary of the decedent's interest in the plan, also had the right to withdraw, any time after the decedent's death, any amount she deemed necessary or appropriate from income and thereafter from principal. The surviving spouse chose to exercise the withdrawal power and convert the annual payments to a single final payment and roll over the eligible portion of the distribution to her own IRA. The decedent's last RMD was made in 1998, which exceeded the RMD made in 1997 and the RMD made in 1996. The definition of non-eligible rollover distributions is any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made (1) for the life (or life expectancy) of the employee or the joint lives (or joint live expectancies) of the employee and the employee's designated beneficiary, or (2) for a period of 10 years or more. See Code Sections 402(c)(2) and 402(c)(4)(A). However, the regulations generally provide that a payment is treated as independent of the payments in a series of substantially equal payments, and thus not a part of the series, if it is substantially larger or smaller than the other payments in the series. See Reg. 1.402(c)-2 Q&A 6. The IRS ruled in the PLR that the surviving spouse's single sum payout qualified as "substantially larger" for the purposes of the exception in the regulation, considering its size relative to the RMDs that had been made in 1996 through 1998. Therefore, the surviving spouse's rollover was deemed to be tax-free. A copy of PLR 199940041 is attached. Kathryn A. Ricard Associate Counsel Attachment

should not be considered a substitute for, legal advice.