LOEB & LOEB LLP

High Net Worth Families

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Introducing the Loeb & Loeb Fine Arts Practice

Loeb & Loeb's Fine Arts Practice brings together a multidisciplinary team of attorneys and professionals to advise clients throughout the international fine art community on business and legal matters relating to the acquisition, ownership, financing and disposition of works of art. Our clients includes artists, owners and collectors, as well as their estates and trusts; museums and other public and private nonprofit arts organizations and foundations; and financial institutions that are active in the arts lending area. Drawing on the knowledge and experience of colleagues across the firm's trusts and estates, tax, finance, intellectual property and litigation practices, we bring a holistic view of the fine arts market to each engagement and are well-positioned to meet our clients' diverse legal needs through a range of counseling, transactional and litigation services. The members of the Fine Arts Practice will be frequent contributors to this newsletter, including the article below on borrowing against art collections. For more information on the Fine Arts Practice, contact Paul Frimmer.

Borrowing Against Art Collections

Your art collection may not be as illiquid as you think. It is possible to raise cash by borrowing against works of art. Although some banks do not offer art-secured loans because of the inherent difficulties in valuing and authenticating art, as well as the moveable nature of works, other banks and the major auction houses increasingly offer art-secured loans if certain requirements are met.

While the terms and conditions on which banks and other lenders will extend credit secured by works of art can vary significantly from lender to lender, typically banks and other institutional lenders are more willing to issue an art-secured loan if the institution has a long-standing relationship with the borrower or if the borrower has other assets, such as marketable securities, that can also serve as additional collateral for the loan. Major auction houses may be willing to lend to borrowers with whom they do not have an already-established relationship in order to bring in future business on the auction house side.

The documentation governing art-secured loans varies, but most loan agreements may include some or all of the following elements to protect the lender:

- The loan-to-value ratio of an art-secured loan typically is between 40 and 60 percent. If the lender is a bank or other financial institution, the borrower will be required to obtain an annual qualified appraisal at the borrower's expense. If an auction house is the lender, it usually will determine the value without additional charge.

- Art-secured loans tend to be of a shorter duration and at a higher interest rate than other loans, such as real estate loans, although they usually will be at a lower interest rate than a comparably sized unsecured loan.

- Loans from auction houses may have interest rates that are higher than those of similar loans from banks and other financial institutions. In addition, the borrower may be required to use the auction house for any future sale of a work of art serving as collateral.

- Some lenders may accept certain specific works of art as collateral, while others may require a borrower to pledge the borrower's entire art collection or a significant portion of a borrower's collection as collateral. Some also may require that the loan be secured by other collateral in addition to artwork.

- Most lenders accept as collateral only the works of recognized artists with a demonstrable fair market value and are unlikely to lend against other collectibles. Typically, each single item of artwork serving as collateral must have a minimum fair market value, and sometimes the value of one or a few works cannot have a value in excess of a percentage of the total value of the collateral. If the borrower's entire collection is serving as the collateral, items with a lesser value may be disregarded for purposes of determining whether the required loan-to-value ratio is satisfied.

- In the United States, lenders usually allow the borrower to keep possession of the art if a UCC Financing Statement is filed to perfect the lender's security interest in the art. UCC Financing Statements are public documents that list the names of the lender and the borrower and include a general description of the collateral. If the art is in storage or displayed in a gallery, however, the lender may also require an agreement with the storage company or gallery under which the lender's security interest in the art is recognized. For those borrowers with privacy concerns, it may be possible to complete the UCC Financing Statement without specifically referencing the work of art, but this must be negotiated on a case-by-case basis with the lender. In order to protect the identity of the borrower, the borrower may be able to own the artwork through a single-member limited liability company, and the limited liability company may be able to enter into the loan and pledge the entity's interest in the artwork as the collateral.

- In other countries that do not allow lenders to register security interests, lenders are less likely to allow the borrower to keep possession of the works of art. New insurance products are available to protect the lender, which may give borrowers in these situations a means of keeping the art on their walls.

- Typically, the borrower will not be able to move (*e.g.*, from home to storage), lend or sell a work of art without first obtaining lender consent, although this consent can sometimes be obtained for a specified set of locations (for example, vacation homes) and reflected in the loan documents executed at the outset of the loan. If a work of art is sold with lender consent, the borrower usually will be required to apply the sale proceeds to the outstanding loan balance. With respect to loan agreements secured by an entire art collection, it may be possible to provide that the sale of a single work of art does not require lender consent if the total fair market value of the remaining collateral after the sale would satisfy the lender's required loan-to-value ratio. If the lender's required loan-to-value ratio cannot be met after the sale of a work of art, the borrower may need to pledge additional collateral or pay down all or a portion of the loan. The borrower also may be able to enter into a 1031 exchange of the art with adequate notice to the lender and the lender's cooperation. The substitute work will become part of the collateral.

- With respect to works purchased from a dealer, some dealers are requiring buyers who wish to resell works to do so through the dealer. While it is unclear whether this restriction is legally enforceable, in any event, it may impair the ability of the lender to sell the collateral in the most appropriate market in the event of default.
- The borrower will be required to maintain insurance for the collateral for the term of the loan.

Art-secured loans may be a significant new source of liquidity for major art collectors who are willing to comply with a lender's requirements. If you have any questions regarding art-secured loans, please contact any one of the members of our Fine Arts group.

New York Court of Appeals Upholds Tax on Nonresident Sellers of S Corporation Stock

The New York Court of Appeals, the highest court in New York, recently upheld the imposition of New York state income tax on a nonresident shareholder who sold stock in an S corporation and elected under Section 338(h)(10) of the Internal Revenue Code to treat the sale of stock as a sale of assets for federal income tax purposes. In the case of a New York S corporation, New York follows the federal income tax treatment and imposes a New York state income tax on the portion of the gain allocable to New York.

In *Burton v. NYS Department of Taxation & Finance*, the taxpayer argued that despite the express provision of the statute, taxation was prohibited by Article 16, §3 of the New York Constitution. That provision fixes the domicile of a nonresident's intangible personal property not employed in business in New York as the domicile of the owner, and prohibits ad valorem and excise taxes based solely on the ownership or possession of intangible personal property. Burton asserted that, despite the IRC Section 338(h)(10) election, the transaction is a sale by a nonresident of stock – intangible property that is not used in a trade or business in New York – and therefore cannot be taxed.

The Court of Appeals unanimously rejected the taxpayer's argument and affirmed the summary judgment the trial court granted to New York. Nothing in the language of the state constitution insulates a nonresident from an income tax. In fact, the legislative history makes it clear that the income from intangible personal property may be taxed. Moreover, the taxpayer voluntarily filed an IRC Section 338(h)(10) election and presumptively was aware of its effect. The deemed asset sale was not merely a fiction of federal law. Rather, the election allowed the parties to change the means by which the gain was realized, as well as the person who realized the gain.

California State Board of Equalization Finds for Taxpayer in Section 1031 Exchange Case

For several years, the California Franchise Tax Board has had a project to identify and challenge certain exchanges of real property for which taxpayers have sought treatment under IRC Section 1031 as tax-free exchanges. The particular types of exchanges in the sights of the FTB are referred to as "drop and swap" and "swap and drop" exchanges.

In a drop-and-swap exchange, real property is held by a partnership or limited liability company. At the time the property is to be sold, some partners wish to sell for cash, while others wish to complete a 1031 exchange. To accommodate these competing interests, the partnership might first distribute undivided interests in the property to retire the interests of the partners who want to complete like-kind exchanges. These partners would hold the distributed interests as tenants in common with the partnership, which would continue to hold the interests for the partners who want to sell for cash. The partnership and each partner holding a tenancy-in-common interest all enter into an agreement to sell the property to a buyer. Upon the closing of the sale, the partnership receives cash, and the proceeds that would be due to the individual sellers are paid by the buyer to a qualified exchange intermediary so those sellers can purchase qualified replacement property and complete a 1031 exchange. In a swap-and-drop exchange, a taxpayer exchanges real property under IRC Section 1031 and shortly after obtaining the replacement property contributes it to an entity, such as a partnership or limited liability company.

The IRS challenged both types of exchanges many years ago on the basis that the short holding period between the taxpayer's receipt of the property from a legal entity and the its sale, or acquisition of replacement property and the transfer of it to a legal entity, precluded the taxpayer from having held the property for investment, a requirement of IRC Section 1031. (The taxpayer must hold both the property he sells and the replacement property for investment.) After losing a series of court cases, the IRS abandoned its position for the most part.

The federal cases favoring taxpayers have not deterred the FTB, however. The Board has disallowed like-kind-exchange treatment in numerous drop-and-swap and swap-and-drop exchange transactions. In the recent case of *Rago Development Corporation (June 23, 2015)*, the California State Board of Equalization unanimously found in favor of the taxpayer on a swap-and-drop exchange. Two different groups had each sold property and jointly acquired a property referred to as Sand Creek Crossing to complete their like-kind exchanges. The Sand Creek Crossing property was purchased on June 30, 2003, and held by the two groups as tenants in common. The two groups arranged to obtain financing on this property, but the lender required that it be owned by a single-purpose limited liability company, and the property was transferred by both groups to Sand Creek Crossing LLC on Jan. 31, 2004, some seven months later.

The Franchise Tax Board challenged the exchange on two grounds: (1) the taxpayers did not hold the property for investment prior to transferring it to Sand Creek Crossing LLC, and (2) the step transaction doctrine should be applied to recast the exchange as one of real property for a membership interest in Sand Creek Crossing LLC, which would not be a like-kind asset under IRC Section 1031.

Relying heavily on the federal cases and a case from the Oregon Tax Court that it found persuasive and well-reasoned, the SBE first determined that the taxpayers did hold the Sand Creek Crossing property for investment. Under the analysis of the federal cases, their interests in Sand Creek Crossing LLC were merely a continuation of their investment in the real property under a different form of ownership, not a cashing out of the investment.

The SBE then turned its attention to the step transaction doctrine, which holds that where a taxpayer engages in a series of transactions or transaction steps, any meaningless step can be ignored by the taxing authority, and the transaction can be recast as though the meaningless step had not occurred. The FTB viewed the taxpayers' seven-month holding of the replacement property as a transitory and needless step, and proposed to reconfigure the transaction as an exchange of real property for an interest in a limited liability company, which is not considered like-kind under IRC Section 1031.

In finding for the taxpayers on both positions raised by the FTB, the SBE emphasized the fact that the taxpayers held the property for seven months before transferring to a legal entity, and a lot can happen in seven months. The SBE also pointed out that the transfer to the legal entity was as a result of a requirement imposed by a third party, in this case the lender. Whether the SBE would come to the same conclusion in a case in which the taxpayer completes a like-kind exchange and then transfers the property to a legal entity the same day or the next day remains unclear, and caution dictates holding replacement property for at least several months prior to any transfer of the property to a legal entity.

We will also have to wait for another case to see whether the SBE will find in favor of the taxpayer in a drop-and-swap exchange. If it continues to follow the federal cases, it should find for the taxpayer, but only time will tell.

Tax Court Finds for the Government in a Case Involving Private Placement Life Insurance

The purchase of a private placement life insurance policy has become an attractive strategy to allow tax-free accumulation of investment income. These policies, usually written by life insurance companies located outside the United States, often in Bermuda or the Cayman Islands, are used to avoid the U.S. scheme for taxing the investment income of life insurance companies. The taxpayer pays large premiums for the policy. A small portion of the premiums is used to cover the mortality risk under the policy, which the company generally reinsures with a much larger insurance company, and the insurer's administrative charges. The insurance company deposits the excess premiums into a separate account and uses them to purchase investments. The income produced by these investments is not subject to U.S. taxes.

Upon the death of the insured, his beneficiary is entitled to receive the greater of the face amount of the policy or the balance of the investment account, either of which free of U.S. tax under IRC Section 101. After the policy has been in force for a few years, the balance of the investment account may be greater than the face amount of the policy, which also eliminates any mortality risk in the policy.

In order for this arrangement to work as intended, the insurance company must be treated for tax purposes as the owner of the investments in the separate policy account. If the taxpayer is treated as the owner of the investments, he will be taxed currently on realized investment income and gains. Central to this determination the amount of control the taxpayer can exert over the investments – too much taxpayer control results in the taxpayer being treated as the owner of the investments.

After a period of uncertainty, the IRS issued a revenue ruling in 2003 intended to serve as a "safe harbor" for taxpayers entering into these kinds of insurance arrangements. In *Rev. Rul. 2003-91*, the insurance company maintained 12 different investment funds that each followed a specific investment strategy. The taxpayer was permitted to allocate the investment account balance among the funds and to change his allocation periodically. He was not permitted to choose specific investments for any account, make recommendations for investments or have any contact with the investment officer for an account regarding the selection of specific investments. Under these circumstances, the IRS ruled that the insurance company would be treated as the owner of the assets in the investment account. Many private placement policies have subsequently been issued that are designed to operate in compliance with *Rev. Rul. 2003-91*.

In *Webber v. Commissioner (Tax Court, June 30, 2015)*, the taxpayer pushed the envelope a bit too far. The taxpayer was a private equity investor who purchased a large private placement life insurance policy from a Cayman Islands insurance company. Over the next several years, the money in the investment account was used to purchase investments in several startup companies the taxpayer recommended to the policy investment advisor. In some cases, the taxpayer actually sold positions in companies that he held to the insurance company for the policy account. In many cases, private equity or venture capital funds that the taxpayer managed also took positions in these same companies.

While the taxpayer recommended the investments acquired by the insurance company, he conveyed his recommendations through intermediaries rather than directly to the policy's investment advisor. In all, he sent 70,000 emails to the intermediaries regarding investment recommendations.

Upon audit, the IRS determined that the taxpayer should be treated as the owner of the assets due to the level of influence he exerted over the policy investments. The Tax Court agreed, finding that, although the terms of the policy did not permit the taxpayer to select or recommend investments, in substance he did so by way of his communications with the investment advisor through the intermediaries. As a result, the taxpayer was subject to tax on the realized income and gains from the investments during the audit years.

Nothing in the court's opinion in the *Webber* case should be taken as calling into question private placement life insurance arrangements that operate in compliance with the requirements of *Rev. Rul. 2003-91*. A taxpayer should still be able to allocate the balance of the investment account among funds offered by the insurance company and reallocate the balance periodically, as long as the taxpayer is not permitted to recommend specific investments for any of the funds. He also cannot communicate with the investment advisor either directly or, as we learned from *Webber*, indirectly.

Taxpayer Denied Deduction for Spousal Support Payments

The requirements of IRC Section 215 for the deduction of payments for alimony or spousal support seem straightforward and not very complicated. Based on the number of cases reaching the Tax Court where the taxpayer loses the deduction, however, the requirements are clearly too complex for many. In order to be deductible as spousal support under IRC Section 215, these criteria must be satisfied: (1) the payment must be received by or on behalf of the payee spouse under a divorce or separation agreement, including a court order; (2) the payment must not be designated as a payment not includible in the gross income of the recipient spouse; (3) if the spouses are legally separated, the payor spouse and payee spouse cannot be members of the same household; and (4) there cannot be any obligation on the payor spouse to make any payment for any period after the death of the payee spouse. In other words, alimony or spousal support must terminate on the death of the payee spouse, or the payment is not deductible. If state law provides that the support payments terminate on death of the recipient, the agreement need not provide for termination – although the best course is to have the agreement or court order so stipulate.

This final requirement that support payments terminate on death that taxpayers (or their advisors) continually seem to forget. A recent example is *Muniz v. Commissioner (Tax Court, July 9, 2015)*, where the issue centered on a single payment of $45,000 the taxpayer was ordered by the court to pay to his ex-wife. The IRS argued, and the Tax Court agreed, that this payment appeared to be more in the nature of a property settlement payment than a payment of spousal support. The court noted, however, that the payment satisfied the first three requirements of IRC Section 215 and turned to evaluate whether the payment was terminable on the death of the wife.

Florida law was applicable to the divorce in question, and Florida law contains a concept known as “lump sum alimony,” which the taxpayer argued applied to the payment. Unfortunately for the taxpayer, under Florida law, lump-sum alimony created a vested right in the payee spouse that did not terminate upon the death of the payee spouse. Therefore the payment, even if viewed as support, did not satisfy the fourth requirement for deductibility.

Taxpayers are often tripped up by one-time support payments that are paid within a very short time. The time within which the payment is required to be made is totally irrelevant. The payment obligation must be terminated if the payee dies before the payment is made in order for the payment to be deductible by the payor. A taxpayer could sign an agreement requiring a payment of support the next day; however, the agreement (or state law) must nevertheless provide that if the intended recipient dies before receiving the payment, the taxpayer is relieved of the obligation to make the payment.

Consistency in Basis Reporting

A decedent’s beneficiaries receive a new income tax basis for the assets that were included in the decedent’s estate (with some limited exceptions). The new basis is the fair market value of the assets on the date of the decedent’s death or, if a certain election is permitted, on a date six months after the decedent’s death. If the assets have appreciated during the decedent’s lifetime, all the “built in gain” disappears, but conversely, if the assets have depreciated in value, any “built in loss” also disappears.

The fair market value of the assets on the relevant valuation date are reported on the decedent’s federal estate tax return, commonly known as the “706,” which is the number of the form. Until recently, a beneficiary had the opportunity to report a basis different from the basis reported by the executor on Form 706 if the beneficiary did not participate in determining the value (for example, the beneficiary was not also the executor). The beneficiary had to show by clear and convincing evidence that the value reported on Form 706 was incorrect. Although the beneficiary had a high burden of proof (clear and convincing), there was no formal coordination between the estate tax system and the income tax system, so unless a beneficiary’s income tax return was audited, beneficiaries often were not challenged on the inconsistent basis.

In the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, Congress has now amended the Internal Revenue Code to provide that the basis for income tax purposes of assets inherited from a decedent is determined by the value reported for estate tax purposes, and the beneficiaries do not have the opportunity to argue that the value should be different. To ensure some coordination between the estate tax system and the income tax system, the executor of an estate must report basis information to the beneficiaries and also notify the IRS of the beneficiaries’ basis. A beneficiary can no longer prove that the basis of an asset should be different from the value reported for estate tax purposes. Furthermore, the IRS will now be able to match up the basis reported on the estate tax return with the basis reported by the beneficiaries on their income tax returns when the assets are sold. (We will provide more information when the IRS explains the procedures for reporting basis to beneficiaries.)

Six-Year Statute of Limitations Now Applies to Overstatement of Tax Basis

The Surface Transportation and Veterans Health Care Choice Improvement Act also amends a provision of the Code to change the result in a U.S. Supreme Court case that we previously covered in this newsletter. *United States v. Home Concrete (April 25, 2012)* dealt with the extended statute of limitations for proposing additional tax liability in the case of certain omissions from gross income on the taxpayer’s return.

The IRS normally has three years after a taxpayer files an income tax return to audit the return and propose additional tax liability. The IRS has six years, however, if the taxpayer omits from the return an amount of gross income that is more than 25 percent of the amount of gross income reported on the return. *Home Concrete* resolved an issue that had been litigated in various circuit courts regarding whether a taxpayer who overstated the tax basis of an asset, and thereby underreported the amount of tax gain that resulted from the sale of the asset, had omitted gross income from the return. The Supreme Court had appeared to put this issue to rest by holding that understating the tax basis of an asset does not cause an omission from income for purposes of making applicable the six-year rather than the three-year statute of limitations.

Congress changed this result by amending the statute specifically to provide that an "understatement of gross income by reason of an overstatement of unrecovered cost or other basis is an omission from gross income." This change applies to tax returns filed after July 31, 2015.

Filing Dates Changed for Certain Income Tax Returns

The Surface Transportation and Veterans Health Care Choice Improvement Act also changed the filing date for certain income tax returns. Calendar-year partnerships will be required to file their tax returns (or request an extension) by March 15, and fiscal-year partnerships will be required to file their returns by the 15th day of the third month following the close of the fiscal year. Under prior law, these returns were due on the 15th day of the fourth month following the close of the taxable year (April 15 for calendar-year partnerships). Returns of calendar-year S corporations will continue to be due by March 15, and for fiscal-year S corporations by the 15th day of the third month following the end of the fiscal year.

Calendar-year C corporations will be required to file tax returns (or request an extension) by the 15th day of the fourth month following the close of the taxable year – or April 15. Under prior law, C corporation returns were due by the 15th day of the third month following the close of the taxable year (or March 15 for calendar-year C corporations).

These changes are effective for taxable years beginning after Dec. 31, 2015. There is an exception for C corporations with a taxable year ending on June 30, however. The change does not go into effect for these C corporations until the taxable year beginning after Dec. 31, 2025 – until that time, returns for such corporations will continue to be due by Sept. 15.

These changed due dates are generally welcome news for taxpayers and tax return preparers. Currently, partnership returns are due on the same day as returns for individuals and C corporations. Many members of pass-through entities often do not have sufficient time to incorporate their Schedule K-1s received from pass-through entities into their own returns and must extend the due dates of their returns and make estimates of taxes owed based on incomplete information. The new due dates provide a more logical flow of information, as pass-through returns (at least for entities on a calendar year) are now all due one month before returns of individuals.

Extended Due Dates

The Surface Transportation and Veterans Health Care Choice Improvement Act generally provides both S and C corporations an automatic six-month extension to file their returns effective for taxable years beginning after Dec. 31, 2015. Calendar-year C corporations will be allowed only an automatic five-month extension for calendar years through 2025, however, and C corporations with a June 30 year-end are entitled to an automatic seven-month extension through 2025, making the extended due dates Sept. 15 and April 15, respectively. An automatic extension means that the IRS will automatically grant the taxpayer's extension request without a showing of reasonable cause. The appropriate form to request an extension must still be filed.

The Act also directs the IRS to modify Treasury regulations to allow extended due dates for other tax and information returns for taxable years beginning after Dec. 31, 2015, including, among other returns:

- A six-month extension to Sept. 15 for calendar-year partnerships.
- A five-and-a-half-month extension to Sept. 30 for calendar-year trusts filing Form 1041.
- A six-month extension to Oct. 15 to file the FBAR.

Taxpayer Realizes Ordinary Income Because He Never Abandoned the Intent to Develop Property

In our newsletter last October (Vol. 9, No. 2), we reported on a case from the Northern District of California holding that a taxpayer realized ordinary income on the sale of real property because he had originally acquired the property with the intent to develop it, and when he sold it many years later, he had done nothing to show that he had abandoned his original plan to develop the property. Real property held primarily for sale is not a capital asset, so a sale gives rise to ordinary income taxed at a higher rate than capital gain income.

The Tax Court recently reached a similar conclusion on clearer facts in the case of *Victor Fargo v. Commissioner (May 25, 2015)*. The taxpayer purchased the property in question in 1988 for $2.7 million with the intent to develop a 72-unit apartment complex and retail space. While the apartments were never developed, the taxpayer did incur costs of more than $1.8 million in his attempts to develop the property through 2001. These costs principally related to architecture, engineering, appraisal, permit and licensing fees. The taxpayer sold the property in 2002 for $14.5 million plus a contingent amount determined by the buyer's sales of homes.

In what seems to be a clearer case than the one decided last fall by the District Court, the taxpayer continually attempted to develop the property during his period of ownership. The fact that no significant development occurred is not relevant. It was easy for the Tax Court to hold that at the time of sale, the taxpayer was holding the property for development, with the result that the taxpayer's gain was taxed as ordinary income.

Surviving Spouse Permitted to Roll Over 401(k) Distribution to Marital Trust

The IRS has issued a private letter ruling approving a surviving spouse's rollover of her husband's 401(k) plan account to a spousal IRA. The couple had established a dual settlor living trust of the kind often used for estate planning. At the death of the first spouse, the trust would divide into a marital trust and a residuary trust. The facts stated in the ruling do not mention an exemption trust, but the presence or absence of that trust was not relevant to the ruling. Following the first death, the surviving spouse became the sole trustee, and the marital trust provided that all income was to be paid to the surviving spouse. In addition, the trustee (the surviving spouse) had total discretion to distribute principal of the marital trust to himself or herself, as well as complete discretion in dividing the trust estate between the marital trust and the residuary trust.

In this case, upon the death of the husband, the balance of his Section 401(k) plan account was paid to the trust as beneficiary. The wife, now the sole trustee, allocated the account balance to the marital trust and thereafter exercised her discretion as trustee to distribute the proceeds of the 401(k) account to herself.

She then wished to roll the 401(k) account proceeds into a spousal IRA. IRC Section 402(c)(9) provides that if a retirement plan benefit is paid to the surviving spouse of the plan participant, it is treated for rollover purposes as though the spouse had been the employee under the plan. This is beneficial because it would allow the surviving spouse to roll the proceeds into her own IRA and take required minimum distributions based on her own age instead of the more rapid distribution scheme that is imposed on inherited IRAs.

She probably applied to the IRS for a private ruling because the 401(k) account proceeds came to her by way of the marital trust rather than directly from the 401(k) plan. In *PLR 201523019*, the IRS ruled that because the wife was the sole trustee of the trust and had complete discretion to transfer the account proceeds to the marital trust and then to distribute these proceeds to herself from there, she should be treated as though she received the account balance directly from the plan. Therefore, under IRC Section 402(c)(9), the proceeds could be rolled into her own IRA.

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