Internal Revenue Service

Department of the Treasury

200008044

Washington, DC 20224

Index No.: 408.00-00

Contact Person:

Telephone Number:

In Reference to:
OP:E:EP:T:1

Date:

DEC 3 1999

Legend:

Grantor:

IRA A:

IRA Trust:

State A:

Individual A:

Individual B:

Individual C:

Individual D:

Individual E:

Dear Taxpayers:

This letter is in response to a letter dated August 11, 1999, submitted by your authorized representative on your behalfs requesting a ruling regarding the federal income tax treatment of certain transactions.

The following facts and representations were submitted in connection with your request:

Grantor was born on May 29, 1922 and died on July 26, 1998. Grantor had four children, three of whom survived him. The child who predeceased Grantor had one child. Grantor owned an IRA (IRA A) at the time of his death. On November 23, 1992, Grantor designated a trust (the "IRA Trust") as the beneficiary of IRA A. The IRA Trust provides that on Grantor's death, the IRA Trust's interest in IRA A is to be divided into as many equal parts as Grantor has stipital

216

lines in existence at his death, and that one equal part of IRA A is to be allocated to a stipital trust for the benefit of each stipital line.

Grantor attained age 70 ½ during 1992 and received a minimum distribution form IRA A prior to April 1, 1993, his required beginning date under sections 408 and 401(a)(9) of the Internal Revenue Code (the "Code"). The amount of the minimum distribution was based on the joint life and last survivor expectancy of Individual D, the eldest beneficiary of the stipital trusts, as determined based on their respective ages as of their birthdays in 1992. Pursuant to the minimum incidental death benefit rule, Grantor's required minimum distributions for 1992 and for subsequent years assumed that the eldest was only ten years younger than Grantor. Grantor had received his required minimum distribution for 1998 from IRA A prior to his death.

Under State A law, the IRA Trust and each stipital trust are valid. The IRA Trust is irrevocable, and each stipital trust became irrevocable on the date of the Grantor's death. The beneficiaries under the IRA Trust and each stipital trust are identifiable from the IRA Trust instrument and each stipital trust instrument. A copy of the IRA Trust instrument and each stipital trust instrument have been provided to the custodian.

Grantor had four stipital lines in existence at the time of his death. Individual A, Individual B, Individual C are each the trustee and sole beneficiary of his or her stipital line. Individuals D and E are the beneficiaries of a 1/3 and 2/3 interest, respectively, of the remaining stipital trust, and Individual D is the trustee of this stipital trust.

In order that the trustee of each stipital trust may have direct control over the investment of such trust's interest in IRA A, the trustees propose to divide IRA A into four equal subaccounts, each representing the interest of one of the four stipital trusts. The amounts in each of the subaccounts will then be transferred via a trustee-to-trustee transfer to four separate IRAs all maintained in Grantor's name. Following these transactions, the four IRAs will hold equal amounts representing the respective 25 percent interests in IRA A.

Based on the above facts and representations, the taxpayer requests the following rulings:

(1) That the division of IRA A into four equal subaccounts will not affect the tax deferred status of the IRA under section 408 of the Code.

(2) That the division of IRA A into four separate subaccounts will not be treated as a taxable distribution to any of the taxpayers within the meaning of section 408(d)(1) of the Code.

(3) That none of the taxpayers will be treated as receiving a taxable distribution under section 408(d) of the Code upon the transfer of each of the subaccounts to four IRAs, respectively.

(4) That, for purposes of satisfying the minimum distribution requirements of section 408(a)(6) of the Code, the amounts in the four IRAs may be distributed to the respective stipital trust over

a period not exceeding the life expectancy of Individual D, the eldest designated beneficiary of IRA A, determined as of the Grantor's required beginning date, with such distributions commencing no later than December 31, 1999.

(5) That any distribution from the four IRAs to the respective beneficiary of such IRA will be treated as a distribution made to a beneficiary after the decedent's death for purposes of section 72(t)(2)(A)(ii) of the Code, and, therefore, will not be subject to the additional ten percent tax imposed by section 72(t)(2).

With regard to ruling requests (1) and (2), section 408 of the Code sets out general rules for IRAs. Section 408(d)(1) provides that except as otherwise provided, any amount paid or distributed out of an individual retirement arrangement shall be included in gross income by the payee or distributee in the manner provided under section 72.

The mere segregation into subaccounts of the interests of multiple beneficiaries to an IRA by the trustee or custodian, at the request of the beneficiaries, does not affect the status of the IRA under section 408 of the Code. Furthermore, the act of segregation of multiple interests in an IRA in and of itself does not render any beneficiary's interest in such IRA forfeitable. Finally, the mere segregation of IRA A into four subaccounts does not result in a taxable distribution(s), as that term is used in Code section 408(d)(1). Thus, said segregation, without more, does not subject any IRA A beneficiary to income tax under Code section 408(d)(1). Accordingly, we rule that the division of IRA into four equal subaccounts will not affect the tax deferred status of IRA A under section 408, nor will this result in a taxable distribution to any of the taxpayers under section 408(d)(1).

With regard to ruling request (3), section 408(d)(3)(A)(i) and 408(d)(3)(B) of the Code contain the rules for a tax deferred rollover of an IRA into another IRA. However, section 408(d)(3)(C)(i) of the Code provides that in the case of an inherited IRA -- (I) this paragraph shall not apply to any amount received by an individual from such an IRA (and no amount transferred from such IRA to another IRA shall be excluded from gross income by reason of such transfer), and (II) such inherited IRA shall not be treated as an IRA for purposes of determining whether any other amount is a rollover contribution.

Section 408(d)(3)(C)(ii) of the Code provides that an IRA shall be treated as an inherited IRA if the individual for whose benefit the IRA is maintained acquires it by reason of the death of another individual, and the acquiring individual is not the surviving spouse of such other individual.

Revenue Ruling 78-406, 1978-2 C.B. 157 (Rev. Rul. 78-406), provides that the direct transfer of funds from one IRA trustee to another IRA trustee does not constitute a payment or distribution to the participant and is not a rollover contribution. Rev. Rul. 78-406 states that this conclusion would apply regardless of whether the bank trustee initiates or the IRA participant directs the transfer of funds.

In this case, a direct trustee-to-trustee transfer, as opposed to a rollover, is proposed. Although IRA A meets the description of an inherited IRA, there is no prohibition against a nonspousal beneficiary having the IRA of the deceased moved from one trustee (or custodian) to another. Accordingly, with regard to ruling request three, we conclude that the trustee-to-trustee transfer of each of the subaccounts in IRA A into four IRAs, each in the name of the Grantor, will not result in a taxable distribution under section 408(d).

Regarding ruling request (4), section 408(a)(6) of the Code provides that rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the IRA trust is maintained. Section 401(a)(9) provides the general rules regarding required minimum distributions from a qualified plan.

Section 401(a)(9)(A)(ii) of the Code provides that a trust shall not constitute a qualified trust under this subsection unless the plan provides that the entire interest of each employee will be distributed, beginning not later than the required beginning date, in accordance with regulations, 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 the employee or the life expectancy of the employee and the designated beneficiary).

Section 401(a)(9)(B)(i) of the Code provides that, where distributions have begun under subparagraph (A)(ii), a trust shall not constitute a qualified trust under this section unless the plan provides that if — (I) the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), and (II) the employee dies before his entire interest has been distributed to him, the remaining portion of such interest will be distributed at least as rapidly as under the method of distribution being used under subparagraph (A)(ii) as of the date of death.

Section 1.401(a)(9)-1 of the Proposed Income Tax Regulations (the "regulations"), Question and Answer E-5(a)(1), provides that generally 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 1.401(a)(9)-1 of the proposed regulations, Q&A E-1(a), provides generally that for required distributions under section 401(a)(9) of the Code, life expectancies are calculated using the employee's (and the designated beneficiary's) attained age as of the employee's birthday (and the designated beneficiary's birthday) in the calendar year in which the employee attains age 70 1/2.

Section 1.401(a)(9)-1 of the regulations, Q&A D-5, provides that the beneficiaries of a trust may be a designated beneficiary of (or designated beneficiaries of) an employee provided that, as of the later of the date on which the trust is named as beneficiary, or the employee's required beginning date, and as of all subsequent periods, the following requirements are met: (1) the trust

219

is a valid trust under state law, (2) the trust is irrevocable or will by its terms become irrevocable upon the death of the employee, (3) the beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's benefit are identifiable from the trust instrument, and (4) the documentation described in D-7 has been provided to the plan administrator. This section further provides that if the above requirements are met, distributions made to the trust will be treated as paid to the beneficiaries of the trust, and the beneficiaries of the trust will be treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)(A)(ii).

The IRA Trust satisfies the above requirements of the regulations, hence, the beneficiaries of the IRA Trust will be considered to be the Grantor's designated beneficiaries. Individual D has the shortest life expectancy of the designated beneficiaries. Accordingly, we conclude that for purposes of the minimum distribution requirements under section 408(a)(6) of the Code, the amounts in the four IRAs may be distributed to the IRA Trust and underlying stipital trusts over a period not exceeding the life expectancy of Individual D, the eldest designated beneficiary, determined as of the date on which the Grantor attained age 70 and 1/2, with such distributions commencing no later than December 31, 1999.

With regard to ruling request (5), section 72(t)(1) of the Code provides that if any taxpayer receives any amount from a qualified retirement plan, the taxpayer's tax for the taxable year under this Chapter shall be increased by an amount equal to ten percent of the portion of such amount which is includible in gross income.

A qualified retirement plan, for purposes of section 72(t) of the Code, includes an individual retirement arrangement under section 408.

Section 72(t)(2) of the Code provides that the tax imposed by section 72(t)(1) will not apply to certain distributions, including those which are made to a beneficiary (or to the estate of an employee) on or after the death of the employee. Grantor of IRA A is deceased. The Grantor designated Individuals A through E as the beneficiaries of IRA A. The segregation of IRA A into four subaccounts does not cause the beneficiaries of IRA A to lose their status as beneficiaries under section 72(t). Accordingly, we conclude that any distribution from the four IRAs will be treated as a distribution made to a beneficiary after the decedent's death for purposes of section 72(t)(2), and, therefore, will not be subject to the additional ten percent income tax under section 72(t)(1).

The above rulings are based on the assumption that IRA A and four other IRAs are valid IRAs under section 408 of the Code at all times relevant to the transaction.

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not used or cited by others as precedent. A copy of this ruling is being sent to your authorized representative in accordance with a power of attorney on file in this office.

220

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

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

Sincerely yours,

(Signed) John Swieca
John Swieca
Chief, Employee Plans
Technical Branch 1

Enclosures:
Deleted copy of this letter
Notice of Intention to Disclose

cc:

221