Internal Revenue Service

Department of the Treasury

Washington, DC 20224

S.I.N.: 408.03-00

Contact Person:

Telephone Number:

In Reference to: OP:E:EP:T:2

Date: DEC 03 1999

Legend:

Individual A:
Individual B:
Individual C:
Individual D:
Company A:
Trust B:
State M:
Act C:

Dear Ms. :

This ruling modifies the ruling this office issued you on February 10, 1999, (PLR 199918065). The following changes are made to the letter:

First, the following paragraphs are added to page 3 of our letter, beginning after the 9th line and the sentence "If Individual B does not appoint a lineal descendant for any amount, upon her death, Trust 2 will be distributed to Individuals C and D under the provisions relating to Trust 1":

> State M adopted Act C. Act C, among other things, requires a trustee to exercise reasonable care, skill, and caution in managing trust assets. Act C also requires that "When investing and managing trust assets, a trustee shall consider the following as are relevant to the trust or its beneficiaries . . . The expected tax consequences of investment decisions or strategies."
>
> If the trustees were to allocate the assets of Trust No. 2 with the IRA assets, Trust No. 2 would recognize taxable income, which would leave Trust No. 2 with only about $339,000 in assets after the payment of federal and state income taxes. Further, because Trust No. 2 is a credit shelter trust which is not included

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in Individual B's estate at her death, using the IRA assets to fund Trust No. 2 will reduce the amount of assets excluded from the estate tax, thereby resulting in more estate tax due at Individual B's death.

Therefore, ...

Second, the following language is added to the last paragraph on page 5, following the first sentence ("Individual B is the surviving spouse of Individual A.") "If the trustees funded Trust No. 2 with assets obtained from Individual A's IRA, they would increase the tax liability and thus would not be exercising reasonable care as required by Act C. Therefore,"

Third, the following paragraph is added after the fourth paragraph on page 7 (If the designated beneficiary . . .):

Q&A C-3(a), section 1.401(a)(9)-1 of the proposed regulations, provides that with respect to a Nonspouse beneficiary, in order to satisfy the rule of section 401(a)(9)(B)(iii) (the exception to the five-year rule for nonspouse beneficiaries) if the designated beneficiary is not the employee's surviving spouse, distributions must commence on or before December 31 of the calendar year immediately following the calendar year in which the employee died. This rule also applies to the distribution of the entire remaining benefit if, as of the employee's date of death, an individual is designated as beneficiary in addition to the employee's surviving spouse. Therefore, the spouse must be the only beneficiary for the requirements applicable to spousal beneficiaries under section 401(a)(9)(B)(iv) of the Code to apply.

Fourth, on page 8, the third paragraph, the following language is added after the second sentence ("Also, a copy of trust instrument . . .) "To meet the fiduciary requirements of Act C, the trustees placed the IRA assets in Trust No. 1. As Individual B has the unrestricted power of withdrawal of the principal in Trust 1, she is the sole beneficiary of the IRA. Therefore, the requirements specified in Q&A C-3(a), section 1.401(a)(9)-1 of the proposed regulations do not apply. On this basis, . . .".

These changes do not affect any of the rulings issued in our February 10, 1999, letter.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

Sincerely yours,

Joyce E. Floyd

Joyce E. Floyd
Chief, Employee Plans
Technical Branch 2

Enclosures:
Deleted copy of Letter
Notice of Intention to Disclose

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