Internal Revenue Service

Department of the Treasury

200010055

Washington, DC 20224

Uniform Issue List: 408.03-01

****
****
****
****
****
****
****
****

Contact Person:

Telephone Number:

In Reference to:

Date: 12/14/99

T:EP:RA:T4

Legend:

Individual A = **********

Individual B = **********

IRA X = **********
****
****

1989 Trust = **********

1995 Trust = **********
****
****
****
****

State W = *********

Dear Mr. *****:

This is in response to a request for letter rulings submitted by your authorized representative on March 10, 1999, as supplemented by letters dated June 3, 1999, June 18, 1999, July 16, 1999, October 22, 1999, December 7, 1999, and December 13, 1999, concerning the distribution of funds from an individual retirement account into a trust and the minimum distribution requirements under section 401(a)(9) of the Internal Revenue Code ("Code").

324

****

The facts and representations on which the request is based are as follows:

Individual A reached his required beginning date, as that term is defined in Code section 401(a)(9), on April 1, 1993, and he died on June 22, 1998. Individual B is his surviving spouse.

For many years prior to death, Individual A was a participant in two plans qualified under Code section 401(a). The beneficiary designation form for the money purchase pension plan, dated August 22, 1989, named Individual B as the primary beneficiary thereof and the 1989 Trust as the contingent beneficiary thereof. The beneficiary designation form for the profit sharing trust ,dated August 20, 1989, also named Individual B as the primary beneficiary thereof, and the 1989 Trust as the contingent beneficiary thereof.

Paragraph 2 of the 1989 Trust provided, in pertinent part, that the trust became irrevocable at the death of Individual A. Paragraph 9 of the 1989 Trust provided, in pertinent part, that upon the death of Individual A, trust distributions were to be made outright to his wife, Individual B. Article 12 of the 1989 Trust provided, in pertinent part, that if the trust were named beneficiary of any qualified plan, including individual retirement accounts, then distributions thereto were to be made over the longest period permitted by law.

On April 27, 1993, Individual A rolled over his benefits from the two plans in which he participated into two IRAs, after Individual B signed forms in which she waived her right to joint and survivor annuities under both plans. Individual A designated the 1989 Trust as the primary beneficiary of his IRAs. Distributions from Individual A's IRAs were based on his sole, recalculated life expectancy. Your authorized representative asserts that annual distributions from Individual A's two IRAs satisfied the minimum distribution requirement under Code section 401(a)(9).

On February 27, 1995, Individual A and his spouse, Individual B, established a joint revocable trust, the 1995 Trust. Under the terms of the 1995 Trust, upon the death of the first of either Individual A or Individual B, the trust was to terminate and its assets were to be transferred to a Survivor's Trust or a credit shelter (Family) trust to be held, managed and distributed as provided in the trust agreement. The Family Trust became irrevocable at the death of the first of either Individual A or Individual B. Two of Individual A's children are co-trustees of the Family Trust.

Individual B is the income beneficiary of the Family Trust. Furthermore, the trustees of the Family Trust were directed under trust language to use for the

325

****

benefit of Individual B such amounts of the trust principal as the trustees deem necessary and/or advisable for the spouse's health, maintenance and support.

The Family Trust named various remaindermen thereof. All of the remaindermen were individuals/human beings and Individual B is older than all of the remaindermen.

Provisions of the 1989 Trust and the 1995 Trust, in pertinent part, preclude the use of IRA assets for the payment of Individual A's debts, taxes, payment of administration, claims of Individual A's estate or any estate, inheritance or similar transfer taxes due on account of Individual A's death. Furthermore, relevant provisions of both trusts required that qualified plan assets, including IRA assets, be used and distributed solely to individual (human being) beneficiaries.

In 1995, following the execution of the 1995 Trust, Individual A changed the beneficiary (ies) of his IRAs. His spouse, Individual B was named the primary beneficiary thereof, and the Family Trust created under the provisions of the 1995 Trust was named the contingent beneficiary thereof. In 1997, Individual A rolled over the then current account balances of his two IRAs into IRA X. Again, Individual B was named the primary beneficiary thereof, and the Family Trust created under the provisions of the 1995 Trust was named the contingent beneficiary thereof.

On February 19, 1999, Individual B, Individual A's surviving spouse, disclaimed approximately $590,000 of Individual A's IRA in accordance with a fractional disclaimer which your authorized representative asserts meets the requirements of Code section 2518. Individual B had accepted no benefits from the disclaimed portion of IRA X prior to her disclaimer. The disclaimer is valid under the laws of State W, the state of Individual A's domicile. Pursuant to the laws of State W, the disclaimed portion of Individual A's IRA X passes to the Family Trust created under the provisions of the 1995 Trust.

The custodian of Individual A's IRA X has been provided information that your authorized representative asserts will enable it to determine the beneficiaries of the IRA and to make IRA distributions thereto.

The non-disclaimed portion of IRA X has been rolled over into an IRA set up and maintained in the name of Individual B and will be distributed to Individual B as the beneficiary thereof over a period measured by her recalculated life expectancy. The portion of Individual A's IRA X which was disclaimed by Individual B, the surviving spouse, and which will be distributed to the 1995 Trust pursuant to the contingent designation of beneficiary filed by Individual A prior to his death, will be distributed through the establishment of a sub-account in the IRA X account. This sub-account will be held in the name of Individual A, and the

****

Family Trust will be the beneficiary thereof. This sub-account is to be distributed to the Family Trust created under the provisions of the 1995 Trust over a term measured by the life expectancy of Individual B, recalculated annually, beginning no later than December 31, 1999.

Your authorized representative asserts that the custodian of the transferee IRA will be provided information that complies with the requirements of section 1.401(a)(9)-1 of the proposed regulations, Q&A D-7.

Based on the above facts and representations, you, through your authorized representative, request the following letter rulings:

(1) Individual B may be treated as the designated beneficiary of the disclaimed portion of Individual A's IRA X. Thus, distributions from the IRA X sub-account referenced above which will hold said disclaimed portion may be made over her life expectancy; and
(2) distributions from the IRA X sub-account which holds the IRA X disclaimed portion must begin no later than December 31, 1999 to be in compliance with the requirements of Code section 401(a)(9) (made applicable to IRAs pursuant to Code section 408(a)(6).

With respect to your ruling requests, section 401(a)(9)(A) 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 – (i) will be distributed to such employee not later than the required beginning date, or (ii) 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 such employee and a designated beneficiary).

Section 401(a)(9)(C) of the Code provides that, for purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the calendar year in which the employee attains age 70- ½.

Section 408(a)(6) of the Code provides that, under regulations prescribed by the Secretary, 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 trust is maintained.

Section 1.401(a)(9)-1 of the proposed regulations, Question and Answer D-3, provides the general rule that for purposes of determining the distribution period described in section 401(a)(9)(A)(ii) of the Code (for distributions before death) the designated beneficiary will be determined as of the employee's required beginning date.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A E-8, provides the general rule that for purposes of recalculating life expectancies under section 401(a)(9)(D) of the Code, an employee's life expectancy (or the joint life and last survivor expectancy of the employee and spouse) is recalculated annually by redetermining the employee's life expectancy (or the joint life and last survivor expectancy of the employee and spouse) in each distribution calendar year using the employee's (and spouse's) attained age as of the employee's (and spouse's) attained age as of the employee's birthday (and spouse's birthday) in the distribution calendar year. Upon the death of the employee (or the employee's spouse), the recalculated life expectancy of the employee (or the employee's spouse) will be reduced to zero in the calendar year following the calendar year of death. In any calendar year in which the last applicable life expectancy is reduced to zero, the plan must distribute the employee's entire remaining interest prior to the last day of such year in order to satisfy section 401(a)(9).

Section 1.401(a)(9)-1 of the proposed regulations, Q&A D-5(a), provides that pursuant to D-2A of this section only an individual may be a designated beneficiary for purposes of determining the distribution period under section 401(a)(9)(A)(ii). Consequently, a trust may not be the designated beneficiary even though the trust is named as a beneficiary. However, if the requirements of paragraph (b) of this D-5 are met, distributions made to the trust will be treated as paid to the beneficiaries of the trust with respect to the trust's interest in the employee's benefit, 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). If, as of any date on or after the employee's required beginning date, a trust is named as a beneficiary of the employee and the requirements in paragraph (b) of third D-5A are not met, the employee will be treated as not having a designated beneficiary under the plan for purposes of section 401(a)(9)(A)(ii). Consequently, for calendar years beginning after that date, distribution must be made over the employee's life (or over the period which would have been the employee's remaining life expectancy determined as if no beneficiary had been designated as of the employee's required beginning date.

The requirements of this paragraph (b) are met if, as of the later of the date on which the trust is named as a beneficiary of the employee, or the employee's required beginning date, and as of all subsequent periods during which the trust is named as a beneficiary, the following requirements are met:

(1) The trust is a valid trust under state law, or would be but for the fact that there is no corpus.
(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 within the meaning of D-2 of this section.
(4) The documentation described in D-7 of this section has been provided to the plan administrator.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A E-5(a), provides that 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 401(a)(9)(B)(i) of the Code provides that where distributions of an employee's interest have begun in accordance with subparagraph (A)(ii) (concerning required distributions), and the employee dies before his 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 listed under subparagraph (A)(ii) as of the date of his death.

Section 401(a)(9)(D) of the Code provides that, for purposes of section 401(a)(9), the life expectancy of an employee and the employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.

In this case, Individual A, prior to his death, participated in two qualified retirement plans and owned several IRAs. He changed beneficiaries of his qualified plan and IRAs on several occasions after he attained his required beginning date as that term is defined in Code section 401(a)(9)(C). Thus, it is necessary to determine which of Individual A's beneficiaries has the shortest life expectancy for purposes of determining the Code section 401(a)(9) distribution period with respect to the transferee IRA referenced above.

The facts indicate that Individual B is the oldest beneficiary, of all potential beneficiaries, of distributions of the disclaimed portion of Individual A's IRA X. Therefore, with respect to your ruling requests, the Service concludes as follows:

(1) Individual B may be treated as the designated beneficiary of the disclaimed portion of Individual A's IRA X. Thus, distributions from the IRA X sub-account referenced above which will hold said disclaimed portion may be made over her life expectancy; and
(2) distributions from the IRA X sub-account which holds the IRA X disclaimed portion must begin no later than December 31, 1999 to be in compliance with the requirements of Code section 401(a)(9) (made applicable to IRAs pursuant to Code section 408(a)(6).

****

This ruling is based on the assumption that the IRAs established by Individual A met the requirements of section 408 of the Code at all times relevant to the transactions described herein, and that the plans met the requirements of Code section 401(a). Additionally, it is based upon the assumption that the IRA X sub-account which will hold the disclaimed portion of IRA X will also meet the requirements of Code section 408.

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

Sincerely yours,

John G. Riddle, Jr., Manager
Employee Plans Technical Group 4
Tax Exempt and Government Entities Division

Enclosures:
Deleted copy of this letter
Notice of Intention to Disclose, Notice 437