Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Index Nos: 401.06-00
401.06-02

Contact Person:

Telephone Number:

In Reference to:
T:EP:RA:T3

Date:

APR 18 2000

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Date 1:

Date 2:

Date 3:

Date 4:

IRA 1:

IRA 2:

IRA 3:

IRA 4:

IRA 5:

Dear :

This is in response to the , letter submitted by your authorized representative on your behalf, as supplemented by correspondence dated , in which you ask for a series of letter rulings under section 401(a)(9) of the Internal Revenue Code. The following facts and representations support your ruling requests.

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Taxpayer A, whose date of birth was Date 1, died on Date 2 having attained age 70 1/2. Taxpayer A's "required beginning date," as that term is used in Code section 401(a)(9)(C) was April 1, 1999.

At his death, Taxpayer A maintained five (5) individual retirement arrangements (IRAs), IRAs 1 through 5, in his name. Prior to his Code section 401(a)(9) required beginning date, Taxpayer A had named his daughters, Taxpayers B and C, as the beneficiaries of his five IRAs. Taxpayer B and Taxpayer C each was to receive 50% of each of Taxpayer A's five IRAs. Taxpayer A had not changed his beneficiary designations prior to his death.

Taxpayer B was born on Date 3, and Taxpayer C was born on Date 4. Thus, Taxpayer B is older than Taxpayer C.

During his lifetime, Taxpayer A has received Code section 401(a)(9) required distributions from his five IRAs based on his recalculated single life expectancy. During calendar year 1999, required minimum distributions from each of Taxpayer A's five IRAs were paid to his beneficiaries, Taxpayers B and C, based upon Taxpayer A's recalculated single life expectancy.

Your authorized representative asserts on your behalf that, since the date of Taxpayer A's death, Taxpayer B's 50 percent share of each of each of Taxpayer A's five IRAs, IRAs 1 through 5, has been accounted for separately from Taxpayer C's share of each of said IRAs. Thus, Taxpayer B's share of each of the five IRAs has been allocated 50 percent of the gains and losses incurred by each IRA since the date of Taxpayer A's death. Furthermore, 50 percent of the expenses incurred by each IRA has been allocated to Taxpayer B's share of the IRA. Finally, 50 percent of the required distribution made from each IRA with respect to calendar year 1999 was made from Taxpayer B's share of the IRA.

The agreements governing IRAs 2 through 5, referenced above, provide, in relevant part, that upon the death of an IRA holder receiving distributions over his recalculated life expectancy, his remaining IRA balance must be distributed no later than December 31 of the calendar year following the calendar year of his death. The IRA 1 agreement contains no such language.

Taxpayers B and C propose to transfer, by means of trustee to trustee transfers, the remaining account balances in IRAs 2 through 5 into new IRAs set up and maintained in the name of Taxpayer A. Taxpayer B will be the named beneficiary of certain of these transferee IRAs, and Taxpayer C will be the named beneficiary of certain other of these transferee IRAs. The transferee IRAs of which Taxpayer B is the named beneficiary will be separate and distinct from those transferee IRAs of which Taxpayer C is the named beneficiary.

The amount to be transferred from IRAs 2 through 5 to the new IRAs to be set up and maintained in the name of Taxpayer A for the benefit of Taxpayer B will be 50 percent of the balance in the IRAs as of the date of Taxpayer A's death less the pro rata share of gains, losses, expenses and calendar year 1999 required distribution as described in a prior paragraph.

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

1. That the life expectancies of Taxpayers B and C may be considered for purposes of determining the designated beneficiary of Taxpayer A's IRAs 1 through 5;

2. that the older of Taxpayer B and Taxpayer C may be treated as the designated beneficiary of Taxpayer A's IRAs 1 through 5;

3. that, with respect to IRA 1, referenced above, for purposes of determining Code section 401(a)(9) required distributions for calendar years beginning with 2000, Taxpayer B may use the remaining life expectancy of Taxpayer B, the older of Taxpayers B and C, reduced by one for each subsequent calendar year;

4. that, with respect to IRA 1, Taxpayer A's use of his single life expectancy, recalculated, in determining required distributions for calendar years during his lifetime, including 1999, does not preclude the use of the remaining life expectancy of the older of Taxpayers B and C to determine required distributions for calendar years commencing with calendar year 2000;

5. that Taxpayer B may directly transfer, by means of trustee-to-trustee transfers, the portions of the remaining balances in IRAs 2 through 5 to which she is entitled into new IRAs as long as the transferee IRAs are maintained in the name of Taxpayer A, deceased, for her benefit;

6. that the transferee IRAs referenced in ruling request five (5), above, set up and maintained in the name of Taxpayer A for the benefit of Taxpayer B may be separate and distinct from the transferee IRAs referenced in ruling request five (5), above, set up and maintained in the name of Taxpayer A for the benefit of Taxpayer C;

7. that the establishment of the transferee IRAs referenced in the fifth and sixth ruling requests, above, will not, in and of itself, result in Taxpayer B's being treated as the distributee, as that term is used in Code section 408, of any amount remaining in IRAs 2 through 5 as long as the transferee IRAs are set up and maintained in the name of Taxpayer A;

8. that the transferee IRAs set up and maintained for the benefit of Taxpayer B, referenced in the fifth through seventh ruling requests, above, need not distribute their entire account balances to Taxpayer B by December 31, 2000, in order to comply with the required minimum distribution requirements of Code section 401(a)(9);

9. that the transferee IRAs set up and maintained for the benefit of Taxpayer B, referenced in the fifth through eighth ruling requests, above, may make Code section 401(a)(9) required distributions to Taxpayer B, the beneficiary thereof, over Taxpayer B's remaining life expectancy;

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10. that Taxpayer B's receiving distributions from the transferee IRAs set up and maintained in her name, referenced in the fifth through ninth ruling requests, above, over her remaining life expectancy will comply with the requirements of Code section 401(a)(9) and will not subject her to the excise tax imposed under Code section 4974;

11. that distributions to Taxpayer B from the transferee IRAs set up and maintained for her benefit, referenced in ruling requests five through 10, above, will be taxed to Taxpayer B, the distributee thereof, in the years distributed pursuant to Code section 408(d)(1); and

12. that Taxpayer B's receipt of distributions from the transferee IRAs set up and maintained for her benefit, referenced above, over her remaining life expectancy, beginning in calendar year 2000, will comply with the minimum requirements of Code section 401(a)(9) which are applicable to IRAs because of Code section 408(a)(6).

With respect to your ruling requests, 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 IRA trust is maintained.

Code section 401(a)(9)(A) provides, in general, that a trust will not be considered qualified 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, 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, in relevant part, 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 (IRA holder) attains age 70 ½.

Code section 401(a)(9)(B)(I) provides that, where distributions have begun over life expectancy (cies) in accordance with subparagraph (A)(ii), a trust shall not constitute a qualified trust under this section unless the plan provides that, if 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 401(a)(9)-1 of the Proposed Income Tax Regulations, Question and Answer D-3, provides that for purposes of calculating the distribution period

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for distributions that begin prior to death, the designated beneficiary will be determined as of the plan participant's (IRA holder's) required beginning date.

Section 401(a)(9)-1 of the proposed regulations, Q&A E-5(a), provides, in general, that if more than one individual is designated as a beneficiary with respect to an employee (IRA holder) 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 Code section 401(a)(9) distribution period.

Section 401(a)(9)-1 of the proposed regulations, Q&A F-1(a), provides that where an employee's benefit is in the form of an individual account and is to be distributed over a period not extending beyond the life expectancy of the employee or the joint life and last survivor expectancy of the employee and his designated beneficiary, the amount required to be distributed for each calendar year, beginning with the first calendar year for which distributions are required and for each succeeding calendar year, must be at least equal to the quotient obtained by dividing the employee's benefit by the applicable life expectancy.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A F-1(d), provides that the term "applicable life expectancy" means the life expectancy (or the joint and last survivor expectancy) determined in accordance with E-1 through E-5 of the proposed regulations, reduced by one for each calendar year which has elapsed since the date on which the life expectancy (or joint and last survivor expectancy) was calculated. However, pursuant to E-6 through E-8, life expectancy is recalculated, the applicable life expectancy will be the life expectancy so recalculated.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A E-6, provides, in general, that the life expectancy of a designated beneficiary may be recalculated if the designated beneficiary is the IRA holder's spouse.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A F-3A, provides, generally, that, with respect to individual account plans from which distributions have commenced prior to the employee's death, post death distributions will comply with the "at least as rapidly as under the method of distribution being used under section 401(a)(9)(A)(ii) rule" if said distributions are made in accordance with Q&A F-1.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A E-8 provides, in pertinent part, that the life expectancy of a non-spouse beneficiary may not be recalculated. Q&A E-8 also provides, in pertinent part, that if the life expectancy of either a plan participant (IRA holder) or his beneficiary is being recalculated, the recalculated life expectancy is reduced to "0" at the end of the calendar year following the calendar year of the IRA holder's or beneficiary's death.

In this case, Taxpayer A, prior to his Code section 401(a)(9) required beginning date, named his daughters, Taxpayers B and C as the beneficiaries of his IRAs, IRAs 1 through 5. As noted above, Taxpayer A did not change his

beneficiary designations prior to his death, and Taxpayer B is older than Taxpayer C.

Thus, with respect to your first two ruling requests, the Service concludes as follows:

1. That the life expectancies of Taxpayers B and C may be considered for purposes of determining the designated beneficiary of Taxpayer A's IRAs 1 through 5;

2. that the older of Taxpayers B and C may be treated as the designated beneficiary of Taxpayer A's IRAs 1 through 5.

With respect to your third and fourth ruling requests, the issue presented is whether post death distributions from Taxpayer A's IRA 1 may be made over Taxpayer B's life expectancy although distributions from IRA 1 during Taxpayer A's life were made over Taxpayer A's recalculated single life expectancy (and not over Taxpayer A's and Taxpayer B's joint life expectancy) without violating the "at least as rapidly" rule of Code section 401(a)(9)(B)(i) as described in section 1.401(a)(9)-1 of the proposed regulations, Q&A F-3A.

In this case, as noted above, Taxpayer A timely designated Taxpayer B as his beneficiary for purposes of Code section 401(a)(9). Thus, Taxpayer A could have received distributions from IRA 1 over his and Taxpayer B's joint life expectancy subject to the minimum distribution incidental benefit requirement. Such distributions would have complied with the minimum required distribution rules. Instead, Taxpayer A chose to receive distributions over his recalculated single life expectancy. In effect, Taxpayer A received distributions in amounts greater than the required minimums, or, in other words, chose to accelerate receipt of lifetime distributions.

Taxpayer A's election to accelerate distributions does not affect the determination, above, that Taxpayer A's timely designating Taxpayer B as his beneficiary resulted in Code section 401(a)(9) required distributions being those computed using Taxpayer A's and Taxpayer B's joint and survivor life expectancy. Thus, although Taxpayer B's life expectancy was not used in computing lifetime distributions to Taxpayer A, it may be used to determine post-death required distributions to Taxpayer A's beneficiaries. In short, the "at least as rapidly rule" will not be violated if post-death distributions are calculated using the life expectancy of Taxpayer A's designated beneficiary, Taxpayer B, since Taxpayer A could have used Taxpayer B's life expectancy to determine the amount of his required lifetime distributions.

In this case, as noted above, Taxpayer A's life expectancy was being recalculated. Thus, as of the end of 2000, the calendar year following the calendar year of his death, Taxpayer A's life expectancy will be reduced to "0". Therefore, required distributions to Taxpayer A's beneficiaries will be those computed using the life expectancy of Taxpayer B, his designated beneficiary.

Thus, with respect to your third and fourth ruling requests, the Service concludes as follows:

3. that, with respect to IRA 1, referenced above, for purposes of determining Code section 401(a)(9) required distributions for calendar years beginning with 2000, Taxpayer B may use the remaining life expectancy of Taxpayer B, the older of Taxpayers B and C, reduced by one for each subsequent calendar year;

4. that, with respect to IRA 1, Taxpayer A's use of his single life expectancy, recalculated, in determining required distributions for calendar years during his lifetime, including 1999, does not preclude the use of the remaining life expectancy of the older of Taxpayers B and C to determine required distributions for calendar years commencing with calendar year 2000.

With respect to your fifth through tenth ruling requests, Revenue Ruling 78-406, 1978-2 C.B. 157, provides that the direct transfer of funds from one IRA trustee to another IRA trustee does not result in such funds being treated as paid or distributed to the participant and such transfer does not constitute a rollover. Furthermore, this revenue ruling states that its conclusion will apply whether the transfer is initiated by the bank trustee or the IRA holder.

Code section 4974(a) provides, in general, that if the amount distributed from either a qualified retirement plan or an IRA during the taxable year of the payee is less than the amount required to be distributed under Code section 401(a)(9), then there is imposed a tax equal to 50 percent of the amount by which said minimum required distribution exceeds the actual amount distributed during said taxable year.

In this case, Taxpayer B is a 50 percent beneficiary of each of Taxpayer A's IRAs, IRAs 1 through 5. Taxpayer B intends to directly transfer, by means of trustee-to-trustee transfers, her 50 percent interest in each of Taxpayer A's IRAs 2 through 5 to new IRAs set up and maintained in the name of Taxpayer A. Taxpayer B will be the beneficiary of said transferee IRAs.

The Service believes that Taxpayer B's proposed course of action complies with the language of Rev. Rul. 78-406. Thus, Taxpayer B may transfer her share of IRAs 2 through 5 to new IRAs set up and maintained in the name of Taxpayer A. Furthermore, since Taxpayer B had been timely designated as the beneficiary of Taxpayer A's IRAs 2 through 5, Taxpayer B will be treated as the designated beneficiary of the transferee IRAs. Finally, Rev. Rul. 78-406 does not require that the full amount standing in an IRA be transferred to one, and only one, IRA. Thus, Taxpayer B may transfer the portion(s) of IRAs 2 through 5 to which she is entitled without regard to whether Taxpayer C's portions in said IRAs remain in IRAs 2 through 5 or are transferred to new IRAs.

Thus, with respect to your fifth through tenth ruling requests, the Service concludes as follows:

5. that Taxpayer B may directly transfer, by means of trustee-to-trustee transfers, the portions of the remaining balances in IRAs 2 through 5 to which she is entitled into new IRAs as long as the transferee IRAs are maintained in the name of Taxpayer A, deceased, for her benefit;

6. that the transferee IRAs referenced in ruling request five (5), above, set up and maintained in the name of Taxpayer A for the benefit of Taxpayer B may be separate and distinct from the transferee IRAs referenced in ruling request five (5), above, set up and maintained in the name of Taxpayer A for the benefit of Taxpayer C;

7. that the establishment of the transferee IRAs referenced in the fifth and sixth ruling requests, above, will not, in and of itself, result in Taxpayer B's being treated as the distributee, as that term is used in Code section 408, of any amount remaining in IRAs 2 through 5 as long as the transferee IRAs are set up and maintained in the name of Taxpayer A;

8. that the transferee IRAs set up and maintained for the benefit of Taxpayer B, referenced in the fifth through seventh ruling requests, above, need not distribute their entire account balances to Taxpayer B by December 31, 2000, in order to comply with the required minimum distribution requirements of Code section 401(a)(9);

9. that the transferee IRAs set up and maintained for the benefit of Taxpayer B, referenced in the fifth through eighth ruling requests, above, may make Code section 401(a)(9) required distributions to Taxpayer B, the beneficiary thereof, over Taxpayer B's remaining life expectancy;

10. that Taxpayer B's receiving distributions from the transferee IRAs set up and maintained in her name, referenced in the fifth through ninth ruling requests, above, over her remaining life expectancy will comply with the requirements of Code section 401(a)(9) and will not subject her to the excise tax imposed under Code section 4974.

With respect to your eleventh ruling request, Code section 408(d)(1) provides, in general, that amounts paid or distributed from an IRA shall be taxed to the payee or distributee, as the case may be, in the manner provided under Code section 72.

As noted above, a transfer by means of a trustee-to-trustee transfer, of amounts from one IRA to another IRA does not constitute a payment or distribution to the individual or individuals on whose behalf the transfer was made or to the individual who will benefit under the transferee IRA. Such individual will be taxed when amounts are paid or distributed from the transferee IRA.

Thus, with respect to your eleventh ruling request, we conclude as follows:

11. that distributions to Taxpayer B from the transferee IRAs set up and maintained for her benefit, referenced in ruling requests five through 10, above, will be taxed to Taxpayer B, the distributee thereof, in the year distributed pursuant to Code section 408(d)(1).

Finally, with respect to your twelfth ruling request, which summarizes conclusions reached previously, the Service concludes as follows:

12. that Taxpayer B's receipt of distributions from the transferee IRAs set up and maintained for her benefit, referenced above, over her remaining life expectancy, beginning in calendar year 2000, will comply with the minimum requirements of Code section 401(a)(9) which are applicable to IRAs because of Code section 408(a)(6).

This ruling letter assumes that Taxpayer A's IRAs 1 through 5 have met and will continue to meet the requirements of Code section 408(a) at all times relevant thereto. Furthermore, it assumes the transferee IRAs into which Taxpayer B will transfer her portions of IRAs 2 through 5 will also meet the requirements of Code section 408(a). Finally, it assumes that Taxpayer B's receiving distributions from her transferee IRAs over her remaining life expectancy will comply with the language of the transferee IRAs.

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

Pursuant to a power of attorney on file in this office, a copy of this letter ruling is being sent to your authorized representative.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Manager, Employee Plans
Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of letter ruling
Form 437