200040035

Internal Revenue Service

Department of the Treasury

Uniform Issue Nos: 401.06-00
401.06-01

Washington, DC 20224

Contact Person:

Telephone Number:

In Reference to:
T:EP:RA:T3

Date:

JUL 12 2000

LEGEND:

Taxpayer A:

Taxpayer B:

Individual C:

Individual D:

Trust E:

Trust F:

Individual G:

Court H:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Calendar Year 8:

Date 9:

Sum 1:

Sum 2:

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IRA X:

County Y:

State Z:

Dear :

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

Taxpayer A divorced Taxpayer B during Calendar Year 8. On Date 1, Taxpayer A established IRA X with a portion of the settlement proceeds of her divorce from Taxpayer B. Additionally, on Date 1, Taxpayer A elected to have IRA X proceeds remaining at her death paid to the beneficiaries named in her Last Will and Testament executed on Date 2.

IRA X, in pertinent part, provides that, with respect to an IRA holder who dies prior to the commencement of Code section 401(a)(9) required distributions, distributions to her beneficiary must begin within one year of the IRA holder's death and must be paid over the beneficiary's life expectancy.

On Date 2, Taxpayer A executed her last will and testament. Article Third of Taxpayer A's Last Will and Testament provides that all of her property, both personalty and realty, was to be given in equal portions to her grandchildren. The portion given to a minor grandchild is to be held in trust for that grandchild and be used exclusively for the child's education until the child attained age 21. Upon a grandchild's attaining his or her twenty-first birthday, the trust assets will be turned over to the trust's beneficiary to do as he or she sees fit.

Taxpayer A died on Date 3, 1998, while a resident of County Y, State Z. Taxpayer A had not attained her Code section 401(a)(9) required beginning date at her death. Taxpayer A was survived by two grandchildren, Individuals C and D. Individual C's birthday was Date 4 and Individual D's birthday was Date 5. Thus, both are under age 21.

Pursuant to Article Third of Taxpayer A's Last Will and Testament, Trust E has been set up for the benefit of Individual C and Trust F has been set up for the benefit of Individual D. Individual G is the sole trustee of Trusts E and F.

On Date 6, Individual G was named the personal representative of the estate of Taxpayer A and the sole trustee of the testamentary trusts created pursuant to the Last Will and Testament of Taxpayer A by Court H, County Y, State Z.

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On Date 7, which was within nine months of Date 3, 1998, the administrator of IRA X was advised that Individuals C and D, as the beneficiaries of the trusts created under Taxpayer A's will, were the beneficiaries of IRA X.

Your authorized representative has asserted, on your behalf, that IRA X had been subdivided into two separate IRA accounts as of Date 3. One of the IRA sub-accounts has been maintained for the benefit of Individual C and the other has been maintained for the benefit of Individual D. Each sub-account has been credited with its pro-rata share of IRA X earnings and expenses.

On Date 9, 1999, Sum 1 was distributed to Trust E and Sum 2 was distributed to Trust F.

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

1. That for purposes of Code section 401(a)(9), Taxpayer A designated Individual C, the beneficiary of Trust E, as the beneficiary of the portion of her IRA X which is payable to Trust E;

2. that distributions to Trust E commenced within the time frame required under Code section 401(a)(9) and the Proposed Income Tax Regulations promulgated thereunder such that distributions to Trust E may be made over Taxpayer C's life expectancy; and

3. that Trust E meets the requirements of section 1.401(a)(9)-1 of the proposed regulations, Qs&As D-5, D-6 and D-7, so that Taxpayer C may be treated as the designated beneficiary of the portion of IRA X paid to Trust E.

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 or 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 1/2.

Section 401(a)(9)(B)(ii) of the Code provides that a trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), the entire interest of the employee will be distributed within 5 years after the death of such employee.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A C-2, provides that, in order to satisfy the five-year rule in section 401(a)(9)(B)(ii), the employee's entire interest must be distributed as of December 31 of the calendar year which contains the fifth anniversary of the date of the employee's death.

Section 401(a)(9)(B)(iii) of the Code provides an exception to the above referenced 5-year rule. Under the exception, any portion of an employee's interest payable to a designated beneficiary which is to be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary) may be so distributed beginning not later than 1 year after the date of the employee's death or such later date as the Secretary may by regulations prescribe.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A D-4, provides, in relevant part, that for purposes of calculating the distribution period described in section 401(a)(9)(B)(iii) or (iv), the designated beneficiary will be determined as of the employee's date of death. If, as of the date of the employee's death, there is no designated beneficiary under the plan with respect to that employee, distribution must be made in accordance with the five-year rule in section 401(a)(9)(B)(ii).

Section 1.401(a)(9)-1 of the proposed regulations, Q&A C-3(a) provides that, in order to satisfy the exception to the five-year rule for nonspouse beneficiaries, 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 a beneficiary in addition to the employee's surviving spouse.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A C-4(c) provides that a plan may adopt a provision that permits employees (or beneficiaries) to elect on an individual basis whether the five-year rule in section 401(a)(9)(B)(ii) of the Code or the exception to the five-year rule in section 401(a)(9)(B)(iii) applies to distributions.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A D-2A, provides that only individuals may be designated beneficiaries for purposes of section 401(a)(9). A person who is not an individual, such as the employee's estate,

may not be a designated beneficiary. However, Q&A D-5 of section 1.401(a)(9)-1 provides that beneficiaries of a trust with respect to the trust's interest in an employee's benefit may be treated as designated beneficiaries if the following requirements are met:

(1) The trust is valid under state law or would be but for the fact that there is no corpus.

(2) The trust is irrevocable or the trust contains language to the effect it becomes 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.

(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 D-6, provides that in the case in which a trust is named as the beneficiary of an employee, all beneficiaries of the trust with respect to the trust's interest in the employee's benefit are treated as designated beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)(B)(iii) and (iv) if the requirements in paragraph (a) of D-5 (above) are satisfied as of the date of the employee's death, or, in the case of the documentation described in D-7 of this section, by the end of the ninth month beginning after the employee's death.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A D-7 provides, in general, that the plan administrator be provided with either a list of all trust beneficiaries as of the date of death or with a copy of the trust document for the trust which is named as beneficiary of the plan as of the employee's date of death. In general, with respect to required distributions which commence after death, the necessary documentation must be furnished no later than the end of the ninth month beginning after the death of the employee (IRA holder).

Section 1.401(a)(9)-1 of the proposed regulations, Q&A E-5(a)(1), provides, in pertinent part, 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. The date for determining the designated beneficiary (under D-3 or D-4, whichever is applicable) is the applicable date.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A H-2, in summary, provides that if, as of an employee's required beginning date, or, for distributions that do not begin prior to the employee's death, as of the employee's death, an employee's benefit under a plan is divided into separate accounts, and the beneficiary (ies) with respect to one separate account differ from the beneficiary (ies) with respect to the other separate accounts, then such separate accounts need not be aggregated for purposes of determining the

Code section 401(a)(9) distribution period. Instead, the Code section 401(a)(9) rules may apply separately to each separate account.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A H-2A, provides, in summary, that a separate account in an individual account is a portion of an employee's benefit determined by an acceptable accounting including allocating investment gains and losses, and contributions and forfeitures, on a pro-rata basis in a reasonable and consistent manner between such portion and any other benefits.

In this case, Taxpayer A died on Date 3, 1998, prior to attaining her Code section 401(a)(9) required beginning date. Taxpayer A maintained IRA X at her death. Taxpayer A named the beneficiaries of the trusts created under her last will and testament as the beneficiaries of her IRA X. The documentation that accompanied this ruling request, and representations made by your authorized representative, indicate that Taxpayer A's' testamentary Trusts E and F meet the requirements of Qs and As D-5 through D-7 of the proposed regulations.

With further respect to this ruling request, your authorized representative has asserted that, as of Date 3, 1998, IRA X was subdivided into two sub-accounts. One of the said sub-accounts has been maintained for the benefit of Individual C, as beneficiary of Trust E, and the other for the benefit of Individual D, as beneficiary of Trust F. Each sub-account has been charged with its pro-rata share of IRA X's earnings and expenses. Additionally, on Date 7, 1999, a distribution from the sub-account maintained for the benefit of Individual C was made to Trust E, and a second distribution from the sub-account maintained for the benefit of Individual D was made to Trust F.

Thus, based on the above, with respect to your ruling requests, the Service concludes as follows;

1. That for purposes of Code section 401(a)(9), Taxpayer A designated Individual C, the beneficiary of Trust E, as the beneficiary of the portion of her IRA X which is payable to Trust E;

2. that distributions to Trust E commenced within the time frame required under Code section 401(a)(9) and the Proposed Income Tax Regulations promulgated thereunder such that distributions to Trust E may be made over Taxpayer C's life expectancy; and

3. that Trust E meets the requirements of section 1.401(a)(9)-1 of the proposed regulations, Qs&As D-5, D-6 and D-7, so that Taxpayer C may be treated as the designated beneficiary of the portion of IRA X paid to Trust E.

This ruling request assumes that IRA X has met and will continue to meet the requirements of Code section 408(a) at all time relevant thereto.

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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

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