Internal Revenue Service

Uniform Issue List 401.06-01

Department of the Treasury

Washington, DC 20224 **200111054**

Contact Person:

Telephone Number:

In Reference to: T:EP:RA:T:3

Date: DEC 21 2000

LEGEND:

Grantor:

IRA X:

IRA Y:

IRA Z:

Trustee A:

Custodian B:

Trustee C:

Beneficiary D:

Beneficiary E:

Beneficiary F:

Dear

This is in response to your request for a private letter ruling dated October 7, 2000, as supplemented by a telephone conversation on November 28, 2000, a document sent by facsimile transmission on December 8, 2000, and correspondence dated December 13, 2000, concerning

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certain income tax consequences of distributions from three individual retirement arrangements ("IRAs"). You submitted the following facts and representations in support of your request.

Grantor was born on March 15, 1915. Grantor maintained IRA X with Trustee A, IRA Y with Custodian B and IRA Z with Trustee C. Grantor attained age 70½ during the calendar year 1985 and died on March 23, 1999. Pursuant to section 1.408-8, Q&A B-2(c), of the Proposed Income Tax Regulations, Grantor's required beginning date for the commencement of required minimum distributions under section 401(a)(9) of the Internal Revenue Code ("Code") from IRA X, IRA Y and IRA Z was December 31, 1987. Grantor began withdrawing his required minimum distributions by his required beginning date. These distributions were based on a single life expectancy and were recalculated annually. On October 28, 1987, Grantor designated Beneficiary E as a 60 percent primary beneficiary, and Beneficiary F as a 40 percent primary beneficiary, of IRA X. On June 21, 1989, Grantor designated Beneficiary E and Beneficiary F each as 50 percent primary beneficiaries of IRA Y. With respect to IRA Z, on January 21, 1982, Grantor designated Beneficiary D (his spouse) as the primary beneficiary, and Beneficiary E and Beneficiary F as contingent beneficiaries in equal shares. Beneficiary E was born on September 11, 1952, and Beneficiary F was born on May 30, 1948. Beneficiary D died October 7, 1987. After Grantor's death, IRA Y was divided between Beneficiary E and Beneficiary F. Beneficiary F's portion was transferred to another IRA trustee or custodian. Beneficiary E's portion remains with Custodian B and is held in Beneficiary E's name as the IRA beneficiary of Grantor.

Based on the above facts and representations, you request rulings to the effect of the following:

1. That Beneficiary E and Beneficiary F are designated beneficiaries for purposes of Code section 401(a)(9) with respect to IRA X, IRA Y and IRA Z;

2. That Beneficiary E and Beneficiary F were timely selected as a designated beneficiaries of IRA X, IRA Y and IRA Z for purposes of Code section 401(a)(9);

3. That Grantor's use of the single recalculated life expectancy in determining his required minimum distributions during his lifetimes does not preclude the use of the term certain life expectancy of the oldest designated beneficiary in the calendar year after the death of Grantor for purposes of calculating required minimum distributions from IRA X, IRA Y and IRA Z; and

4. That in determining the required minimum distributions from IRA X, IRA Y and IRA Z after the death of Grantor, Beneficiary E may use the remaining term certain life expectancy of Beneficiary F commencing in the calendar year 2000 and reduced by one for each calendar year thereafter.

Code section 408(a) defines an IRA as a trust which meets the requirements of sections 408(a)(1) through 408(a)(6). Section 408(a)(6) states in pertinent part that under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) shall apply to the distribution of the entire interest of an individual for whose benefit the IRA trust is maintained.

Section 401(a)(9) sets for the general rules applicable to required minimum distributions from qualified plans.

Code section 401(a)(9)(A)(ii) 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 such employee or the life expectancy of such employee and a designated beneficiary).

Code section 401(a)(9)(C)(i) provides that, for purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the later of (I) the year in which the employee attains age 70 ½ or (II) the calendar year in which the employee retires. Section 401(a)(9)(C)(i)(II) is not applicable to IRAs.

Code section 401(a)(9)(B)(i) 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 his death.

Section 1.401(a)(9)-1, Q&A D-2(a)(1), of the proposed regulations provides, in pertinent part, that designated beneficiaries are only individuals who are designated as beneficiaries under the plan. In general, it provides that an individual may be designated as a beneficiary under the plan either by the terms of the plan or, if the plan provides, by an affirmative election by the employee (or the employee's surviving spouse) specifying the beneficiary. A beneficiary designated as such under the plan is an individual who is entitled to a portion of an employee's benefit, contingent on the employee's death or another specified event.

Section 1.409(a)(9)-1, Q&A D-3(a), of the proposed regulations provides in pertinent part that for purposes of calculating the distribution period described in section 401(a)(9)(A)(ii) (for distributions before death), the designated beneficiary will be determined as of the employee's required beginning date. If, as of that date, there is no designated beneficiary under the plan to receive the employee's benefit upon the employee's death, the distribution period is limited to the employee's life (or a period not extending beyond the employee's life expectancy).

In the present case, Beneficiary E and Beneficiary F were designated as primary beneficiaries under IRA X by an affirmative election specifying the beneficiaries by Grantor on October 28, 1987, through use of a form provided by Trustee B entitled "Application and Beneficiary Designation". Beneficiary E and Beneficiary F were designated as contingent beneficiaries under IRA Z on January 21, 1982, in the terms of IRA Z. Beneficiary E and Beneficiary F are

entitled to portions of Grantor's benefit in IRA X contingent on Grantor's death. Beneficiary E and Beneficiary F are entitled to portions of Grantor's benefit in IRA Z contingent upon Grantor's death and upon Beneficiary D's death. Since Beneficiary E and Beneficiary F were named as designated beneficiaries on January 21, 1982, and on October 28, 1987, under IRA Z and X respectively, which were before Grantor's required beginning date of December 31, 1987, Beneficiary E and Beneficiary F were selected in a timely manner for purposes of calculating the distribution period described in Code section 4019a)(9)(A)(ii). However, with respect to IRA Y, Beneficiary E and Beneficiary F were named as designated beneficiaries on June 21, 1989, which was after Grantor's required beginning date of December 31, 1987.

Accordingly, with regard to ruling request one, we conclude that Beneficiary E and Beneficiary F are designated beneficiaries for purposes of Code section 401(a)(9) with respect to IRA X and IRA Z, but that Beneficiary E and Beneficiary F are not designated beneficiaries for purposes of Code section 401(a)(9) with respect to IRA Y. With respect to ruling request two, we conclude that Beneficiary E and Beneficiary F were timely selected as designated beneficiaries of IRA X and IRA Z, but that Beneficiary E and Beneficiary F were not timely selected as designated beneficiaries of IRA Y.

Section 401(a)(9)(D) of the Code permits an employee and his spouse to recalculate their life expectancies annually. Section 1.401(a)(9)-1, Q&A E-8(a), of the proposed regulations provides guidance on how an employee's life expectancy is recalculated and provides that 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, Q&A E-8(b), of the proposed regulations, provides guidance on calculating the applicable life expectancy when the employee's life expectancy is being recalculated and the life expectancy of his designated beneficiary is not recalculated. It provides in relevant part that if the designated beneficiary is not the employee's spouse and the life expectancy of the employee is being recalculated annually, the applicable life expectancy for determining the minimum distribution for each distribution calendar year will be determined by recalculating the employee's life expectancy but not recalculating the beneficiary's life expectancy. Such applicable life expectancy is the joint life and last survivor expectancy using the employee's attained age as of the employee's birthday in the distribution calendar year and an adjusted age of the designated beneficiary. The adjusted age of the designated beneficiary is determined as follows: First, the beneficiary's applicable life expectancy is calculated based on the beneficiary's attained age as of the beneficiary's birthday in the calendar year described in E-1, reduced by one for each calendar year which has elapsed since that calendar year. The age (rounded if necessary to the higher age) in Table V of section 1.72-9 is then located which corresponds to the designated beneficiary's applicable life expectancy. Such age is the adjusted age of the designated beneficiary. As provided in paragraph (a), upon the death of the employee, the life expectancy of the employee is reduced to zero in the calendar year following the calendar year of the employee's death. Thus, for determining the minimum distribution for such calendar

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year and subsequent calendar years, the applicable life expectancy is the applicable life expectancy of the designated beneficiary determined under this paragraph.

Section 1.401(a)(9)-1, Q&A E-1(a), of the proposed regulations provides generally that for required distributions under section 401(a)(9)(A) 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 ½.

Section 1.401(a)(9)-1, Q&A E-5(a)(1), of the proposed regulations provides generally 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.

Because Grantor's life expectancy was being recalculated, upon his death, in accordance with Q&A E-8(a) of section 1.401(a)(9)-1 of the proposed regulations, his life expectancy was reduced to zero. Although his benefit was paid in the form of a single life expectancy upon his death, his life expectancy was not the last applicable life expectancy because he timely designated his beneficiaries by his required beginning date in accordance with Q&A D-3(a) of section 1.401(a)(9)-1 of the proposed regulations. Therefore, pursuant to Q&A E-8(b) of section 1.401(a)(9)-1 of the proposed regulations, for purposes of determining the minimum distribution in the calendar year after the death of Grantor, the applicable life expectancy is the life expectancy of the designated beneficiary as determined under that section.

Since more than one individual was designated as a beneficiary under IRA X and IRA Z with respect to the Grantor as of December 31, 1987 (Grantor's required beginning date), pursuant to section 1.401(a)(9)-1, Q&A E-5(a)(1), of the proposed regulations, the beneficiary who is the oldest and, correspondingly, who has the shortest life expectancy, will be the designated beneficiary for purposes of determining the distribution period under IRA X.

Therefore, with respect to ruling request three, we conclude that Grantor's use of the single recalculated life expectancy in determining his required minimum distributions during his lifetime does not preclude the use of the term certain life expectancy of the oldest designated beneficiary in the calendar year after the death of Grantor for purposes of calculating required minimum distributions from IRA X and IRA Z. With respect to IRA Y, our response to ruling request two renders a response to ruling request three unnecessary.

Beneficiary F had the shortest life expectancy of the two designated surviving beneficiaries on Grantor's required beginning date, December 31, 1987. Therefore, he should be the designated beneficiary whose life expectancy will be used when determining the minimum distribution period under IRA X and IRA Z for the calendar year commencing after the year of Grantor's death, and for all subsequent years.

Pursuant to Q&As E-1(a) and E-8(b) of section 1.401(a)(9)-1 of the proposed regulations, Beneficiary F's applicable life expectancy is calculated based on his attained age as of his

birthday in the calendar year (1985) in which Grantor attained age 70 ½, reduced by one for each calendar year which has elapsed since that calendar year. His single life expectancy in the year that Grantor attained age 70 ½ was 45.4. Therefore, as of the calendar year 2000, the remaining term-certain period with respect to Beneficiary F is 30.4 years. Pursuant to Q&A E-8(b), this period is reduced by one for each calendar year subsequent to 2000.

Accordingly, with respect to ruling request four, we conclude that in determining the required minimum distributions from IRA X and IRA Z after the death of Grantor, Beneficiary E may use the remaining term certain life expectancy of Beneficiary F commencing in the calendar year 2000 and reduced by one for each calendar year thereafter. Please note that distributions may be taken out over a shorter period of time. With respect to IRA Y, our response to ruling request two renders a response to ruling request four unnecessary.

This ruling letter is based on the assumption that IRA X and IRA Z have met, and will continue to meet, the requirements of Code section 408(a) at all relevant times.

This ruling is directed only 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.

Sincerely yours,

Frances V. Sloan

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

Enclosures
Notice 437
Deleted copy of ruling letter