DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200209057

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

T:EP:RA:T2

Significant Index No.: 401.06-00

LEGEND

Decedent =

Trust A =

Instrument B =

Co-Trustee C =

Co-Trustee D =

Co-Trustee E =

State F =

IRA X =

IRA Y =

Dear

This is in response to your request for a private letter ruling dated September 22, 2000, as supplemented by correspondence dated November 8, 2001. In support of your request, you have submitted the following facts and representations.

On June 10, 1992, Decedent executed Trust A in which Co-Trustee C, Co-Trustee D, and Co-Trustee E were named as successor co-trustees. Trust A was

amended by Instrument B, dated March 28 1995, which named Co-Trustee C as a current trustee of Trust A along with the Decedent who was then also a current trustee. Instrument B also amended Trust A to provide that Co-Trustee D and Co-Trustee E were to serve upon the resignation of both current trustees, Decedent and Co-Trustee C. In the event, however, of the resignation of only the Decedent, Co-Trustee C could appoint either or both Co-Trustee D and Co-Trustee E to serve as Successor Co-Trustee(s).

Article I.C of Trust A provides that upon the death of the Decedent, the trustee of Trust A shall pay from the principal of the trust estate the expenses of the last illness and the funeral and burial expenses of the Decedent. The remaining balance of Trust A would then be paid to the issue of the Decedent, namely Co-Trustee C, Co-Trustee D, and Co-Trustee E. Co-Trustee D is the oldest of the named beneficiaries whose date of birth is February 13, 1949.

Prior to her death, Decedent established IRA X and IRA Y. By a beneficiary designation dated November 4, 1993 with respect to IRA X and July 5, 1995 with respect to IRA Y, the Decedent named Trust A as beneficiary of IRA X and IRA Y. Decedent did not change her beneficiary designations prior to her death. Also prior to her death, Decedent had received minimum distributions from IRA X and IRA Y as required by section 408 of the Internal Revenue Code ("Code"), and was over the age of 70½ (the age at which required minimum distributions must begin for purposes of section 401(a)(9) of Code). You represent that decedent was receiving distributions from IRA X and IRA Y over her recalculated single life expectancy. Decedent was born on August 22, 1926, and died on April 13, 2000, at the age of 73. On the date of her death, Decedent was a resident of State F. The Decedent's estate incurred burial and funeral expenses in the amount of $1,839. Under State F law, assets in an IRA are exempt from all claims of creditors of the beneficiary or participant. By State F law, the IRA account balances could not be used to pay the funeral expenses. Payment of the funeral expenses came from a prepaid funeral account of Decedent, and the family of Decedent who received reimbursement from a jointly owned bank account maintained by Decedent and Co-Trustee C, and not Trust A.

Under the law of State F, Trust A became irrevocable upon the death of Decedent. You represent that Trust A is a valid State F trust under the laws of that state. The beneficiaries of Trust A, namely Co-Trustee C, Co-Trustee D, and Co-Trustee E are identifiable from Article I.C of Trust A.

As required by Proposed Income Tax Regulation ("proposed regulation") section 1.401(a)(9)-1, Q&A D-7, prior to the expiration of nine months from Decedent's death, on August 16, 2000, a certification of Decedent's death which identified the beneficiaries of Trust A dated August 3, 2000, was mailed to the custodian of IRA X, and on September 14, 2000, a similar certification dated August 3, 2000, was mailed to the custodian of IRA Y.

Based on the above, you request the following letter rulings:

(1) That Trust A is treated as the beneficiary of IRA X and IRA Y as of the date of the Decedent's death and the beneficiaries thereof may be considered designated beneficiaries for purposes of determining the distribution period for payment of benefits from IRA X and IRA Y under Code section 401(a)(9).

(2) That distributions made from IRA X and IRA Y to Trust A shall (a) begin no later than December 31, 2001; shall (b) be treated as paid to the beneficiaries of Trust A who shall be treated as having been designated as beneficiaries of the Decedent and, shall (c) be made over the life expectancy of Co-Trustee D.

Section 408(a)(6) of the Code generally provides that under regulations prescribed by the Secretary of the Treasury, rules similar to the rules of section 401(a)(9) of the Code 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 401(a)(9)(A) of the Code generally provides that a plan will not be qualified under section 401(a) unless that 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 joint lives of such employee and a designated beneficiary, or over a period not extending beyond the life expectancy of such employee (or the joint life expectancies 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.

Code section 401(a)(9)(B)(i) provides that, where distributions have begun over life expectancies 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/her entire interest has been distributed to him/her, 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, Q&A D-3, provides that for purposes of calculating the distribution period 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 1.401(a)(9)-1 of the Proposed Regulations, Q&A D-2(a)(1), 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 1.401(a)(9)-1 of the Proposed Regulations, Q&A D-5 provides, in part,

A. (a) 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 itself 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-5A 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 employee 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)(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 this 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)(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).

(b) 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 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.

(c) In the case of payments to a trust having more than one beneficiary, see E-5 of this section for the rules for determining the designated beneficiary whose life expectancy will be used to determine the distribution period.

Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A D-6, provides, in part, 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.

With respect to your first ruling request, Decedent, prior to her Code section 401(a)(9) required beginning date, named Trust A as the beneficiary of her IRA X and IRA Y. As noted above Decedent did not change her beneficiary designation prior to her death.

Trust A is a valid trust under State F law which became irrevocable at Decedent's death by the terms of the trust agreement. You have represented that, in accordance with statutory requirements of State F, neither the IRA X nor IRA Y account balance could be used to pay Decedent's funeral expenses. It is represented that these expenses were paid from a prepaid funeral account of the Decedent and the family of the Decedent and not from Trust A. Furthermore, Co-Trustee C, Co-Trustee D, and Co-Trustee E were referenced and identifiable in Trust A as the beneficiaries thereof. Finally, a certification of Decedent's death which identified the beneficiaries of Trust A was given to the custodian of IRA X and the custodian of IRA Y within nine months after Decedent's death in accordance with section 1.401(a)(9)-1 Q&A D-7(b) of the Proposed Regulations.

Based on the above, we conclude, with respect to ruling request number one that Trust A is a "see-through" trust described in section 1.401(a)(9)-1 of the Proposed Regulations, Q&As D-5 and D-6 as discussed above and is a named beneficiary of IRA X and IRA Y as of the date of Decedent's death and that Co-Trustee C, Co-Trustee D, and Co-Trustee E, the beneficiaries of Trust A, may be considered designated beneficiaries for purposes of determining the distribution period for payment of benefits from IRA X and IRA Y under Code section 401(a)(9).

With respect to your second ruling request, Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A E-5, 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.

Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A F-3A provides, in part, 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 401(a)(9)(D) of the Code permits an employee and his/her spouse to recalculate their life expectancies annually. Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A E-8(a), provides guidance on how an employee's life expectancy is recalculated and provides that upon the death of the employee, 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 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 E-8(b), provides guidance on calculating the applicable life expectancy when the employee's life is being recalculated and the life expectancy of his/her 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 beneficiaries life expectancy. Such applicable life expectancy is the joint 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:

> 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 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 of the Proposed Regulations, Q&A E-1(a), 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 70 1/2.

Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A F-5, provides, generally, that in the case of an individual account, the benefit used in determining the minimum distribution for a distribution calendar year is the account balance as of the last valuation date in the calendar year immediately preceding any distribution calendar year.

Section 1.408-8 of the Proposed Regulations, Q&A A-5, provides that for purposes of determining the minimum distribution required to be made from an IRA in any calendar year, the account balance of the IRA as of the December 31 of the calendar year immediately preceding the calendar year for which distributions are being made will be substituted in section 1.401(a)(9)-1 F-1 for the benefit of the employee. The account balance as of the December 31 of such calendar year is the value of the IRA upon close of business on such December 31. However, for purposes of determining the minimum distribution for the second distribution calendar year for an individual, the account balance as of December 31 of such calendar year must be reduced by any distribution (as described in section 1.401(a)(9)-1 F-5(c)(2)) made to satisfy the minimum distribution requirements for the individual's first distribution calendar year after such date.

Because Decedent's life expectancy was being recalculated, upon her death, in accordance with Q&A E-8(a) of section 1.401(a)(9)-1 of the Proposed Regulations, her life expectancy will be reduced to zero as of the end 2001, the calendar year following the calendar year of her death. Although her benefit was paid in the form of a single life expectancy, upon her death, her life expectancy was not the last applicable life expectancy because she timely designated her beneficiary by her required beginning date in accordance with Q&A D-3(a) 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 Decedent, the applicable life expectancy is the life expectancy of the designated beneficiary as determined under that section. Decedent died on April 13, 2000. Therefore, the calendar year after the death of Decedent, namely the calendar year ending December 31, 2001, is the date by which distributions must begin to be made from IRA X and IRA Y to the beneficiaries thereof using the life expectancy of her designated beneficiary.

Because Decedent named Trust A as her beneficiary of IRA X and IRA Y and because Trust A is a trust that meets the requirements of Q&A D-5A(b) of the Proposed Regulations, the distributions from IRA X and IRA Y made to Trust A will be treated as having been paid to the beneficiaries of Trust A, and as stated above, the beneficiaries of Trust A will be treated as having been designated as beneficiaries of IRA X and IRA Y for purposes of determining the distribution period under section 401(a)(9)(A)(ii) of the Code.

Since more than one individual was designated as a beneficiary with respect to IRA X and IRA Y, pursuant to section 1.401(a)(9)-1 of the Proposed Regulations, Q&A E-5(a)(1), the beneficiary who is the oldest and, who has the shortest life expectancy, will be the designated beneficiary for purposes of determining the distribution period under IRA X and IRA Y.

Co-Trustee D had the shortest life expectancy of the three designated beneficiaries on Decedent's required beginning date. Therefore, Co-Trustee D is the designated beneficiary whose life expectancy will be used when determining the minimum distribution period under IRA X and IRA Y for the calendar year commencing after the year of Decedent's death and for all subsequent years thereafter.

Thus, with respect to your second ruling request, we conclude that (a) distributions made from IRA X and IRA Y to Trust A must begin no later than December 31, 2001; (b) that, for purposes of Code section 401(a)(9), such distributions shall be treated as paid to the beneficiaries of Trust A who shall be treated as having been designated as beneficiaries of Decedent; and (c) such distributions shall be made over the life expectancy of Co-Trustee D.

These rulings are based upon the assumption that the IRA X and IRA Y otherwise meet the requirements of section 408 of the Code.

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.

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

If additional information is needed, please contact
T:EP:RA:T2, at

Sincerely yours,

(signed) JOYCE E. FLOYD
Joyce E. Floyd, Manager
Employee Plans Technical Group 2
Tax Exempt and Government Entities
Division

Enclosures:
Deleted copy of letter ruling
Notice of intention to disclose

cc:

cc: