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

200218039

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 401.29-02

T:EP:RA:T:1

FEB 4 2002

Legend:

Taxpayer A =

Taxpayer B =

IRA X =

Company C =

Sum O =

Trust M =

Bank D =

Court E =

State F =

Dear :

This is in response to a ruling request dated September 26, 2000, as supplemented by additional correspondence dated October 25, 2001, October 29, 2001, December 12, 2001, January 4, 2002, and January 8, 2002, from your authorized representative concerning sections 401(a)(9) and 408(a) of the Internal Revenue Code ("Code").

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The following facts and representations have been submitted:

Taxpayer B, who was married to Taxpayer A, died on . Taxpayer B was born on and Taxpayer A was born on Taxpayer B died after attaining age 70 & ½. Taxpayer A has currently reached age 70 & ½.

Taxpayer B established and maintained IRA X. On February 22, 1991,Taxpayer B, concurrently with the execution of his Last Will and Testament also executed Trust M. Section Three of his will directed the residue of his estate be given to Trust M.

Under the provisions of Article II of Trust M, the trustee is required to pay income of the Trust to his wife, Taxpayer A, "not less often than quarterly" and to pay principal to Taxpayer A, her children or their issue according to ascertainable standards. Upon the death of Taxpayer A, Article II section C subsection 1 of Trust M directs that 10 per cent of the Trust assets be distributed to such charitable or other organizations described in Code section 501(c)(3) as shall be chosen by the surviving children of Taxpayer B. Upon the death of Taxpayer A, Article II section C subsections 2 and 3 of Trust M direct that the remaining 90 percent of the Trust assets remain in trust for the benefit of the children for their lives, and be ultimately distributed to grandchildren.

At the time taxpayer B died, he owned IRA X, sponsored by Company C, with an approximate value of Sum O. For purposes of determining required minimum distributions during his lifetime, Taxpayer B elected to recalculate his life expectancy. On February 27, 1992, Taxpayer B signed an application for IRA X which designated Bank D, Trustee for Trust M, dated February 22, 1991, as beneficiary of IRA X. A copy of the trust document and subsequent amendments have been provided to the Administrator of IRA X.

On , Court E, a court of competent jurisdiction, entered an order reforming Trust M. Pursuant to such order, the Trust is split and divided into two independent and separate shares. One share, equal to 10 per cent of the value of the Trust as of the date of Taxpayer B's death, will, upon the death of Taxpayer A, be distributed in full to charitable beneficiaries designated by the children of Taxpayer B, pursuant to Article II section C subsection 1. The other share, equal to 90 per cent of the value of the Trust assets as of the date of death of Taxpayer B will remain in trust and be distributed for the benefit of the children and grandchildren of Taxpayer B pursuant to the provisions of Article II section C subsections 2 and 3. The order further authorizes the trustee to make disproportionate divisions of property and allocations to the separate shares of the trust including "allocating all or none of any item to one share or the other."

On , Court E amended the order by providing that the Trustee shall distribute the trust on a pro-rata basis. In addition, the

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order stated that the Trustee shall not allocate different kinds, disproportionate shares or undivided interests among the separate trust shares or beneficiaries.

It is represented that Trust M signed by Taxpayer B on February 22, 1991, is a valid trust under the laws of State F and said Trust as amended by Court E on , and , continues to be a valid Trust under the laws of State F. Article VIII of Trust M provides that the right to revoke Trust M is limited to the grantor thereof (Taxpayer B).

Based on the foregoing facts and representations, you have requested the following rulings:

1) That required distributions with respect to the 90 per cent of IRA X paid to the wife (Taxpayer A), children, and grandchildren of Taxpayer B may be made in accordance with requirements of Code section 401(a)(9) and the proposed regulations promulgated thereunder without regard to any distribution(s) made from said IRA X to the charitable entity(ties) which is the beneficiary(ies) of the remaining 10 per cent of IRA X.

2) That the required distributions from the 90 per cent of Taxpayer B's IRA X, payable to Taxpayer A and Taxpayer B's children and grandchildren, will be computed according to Code section 401(a)(9)(B)(i) with the life of Taxpayer A as the measuring life.

Regarding Ruling Request one, Code section 408(b) defines an Individual Retirement Annuity as an annuity contract or endowment contract which is issued by an insurance company and meets the requirements set forth in Code sections 408(b)(1) through (b)(4). Code section 408(b)(3) provides that under regulations prescribed by the Secretary, rules similar to the rules of Code section 401(a)(9) and the incidental death benefit requirements of Code section 401(a) shall apply to the distribution of the entire interest of the owner.

Code section 401(a)(9)(A) provides, in general, a trust shall not constitute a qualified trust 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 or the life expectancy of such employee and a designated beneficiary).

Code section 401(a)(9) (E) defines the term "designated beneficiary" as any individual designated as a beneficiary by the employee.

Section 1.401(a)(9)-1 Question and Answer D-2A of the Proposed Income Tax Regulations states in part that only individuals may be designated beneficiaries for purposes of computing required distributions under Code section 401(a)(9). A person who is not an individual, such as the employee's estate, may not be a designated beneficiary. However, Proposed Regulation section 1.401(a)(9)-1 Question and Answer D-5 states generally that if a trust is named as beneficiary, the underlying beneficiaries of the trust may be treated as designated beneficiaries for purposes of Code section 401(a)(9), 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 that it becomes irrevocable upon the death of the employee/owner; 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; and 4) a copy of the trust instrument is provided to the plan administrator.

Section 1.401(a)(9)-1 Question and Answer H-2A of the Proposed Income Tax Regulations states except as provided in paragraphs (b) and (c), if an employee's benefit under a plan is divided into separate accounts (or segregated shares in the case of a defined benefit plan), the separate accounts (or segregated shares) will be aggregated for purposes of satisfying the rules in section 401(a)(9).

Regarding ruling request two. Code sections 401(a)(9)(A)(i) and (ii) and 401(a)(9)(C) provide that the entire interest of each employee under a plan to which the required minimum distribution rules apply must be distributed no later than April 1 of the calendar year following the calendar year in which the individual attains age 70 & 1/2 (the required beginning date) or, in general, must be distributed beginning not later than the required beginning date, in accordance with Regulations, over the life of the employee or over the lives of the 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).

Proposed Regulation 1.401(a)(9)-1 Question and Answer D-6(A) states generally that in the case in which a trust is named as a beneficiary, all beneficiaries of the trust with respect to the trust's interest in the employee's benefit are treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under Code section 401(a)(9)(A)(ii) if certain requirements set forth are met.

In situations where a trust has more than one beneficiary, Proposed Regulation 1.401(a)(9)-1 Question and Answer E-5A provides generally that the designated beneficiary with the shortest life expectancy will be the designated beneficiary for

purposes of determining the distribution period. Code section 401(a)(9)(B) provides, in part, that if distributions have begun under section 401(a)(9)(A)(ii) and the employee dies before the entire interest has been distributed, the remaining portion of such interest will be distributed at least as rapidly as under the method of distribution being used under section 401(a)(9)(A)(ii) as of the date of the death of the owner.

In this case, Taxpayer B maintained IRA X at the time of his death. Furthermore, Taxpayer B timely made Trust M as the beneficiary of his IRA X. The information provided above indicates that Trust M is a "see-through trust" within the meaning of section 1.401(a)(9) of the proposed regulations.

Trust M provides that 90 per cent of the trust assets are to be set aside and allocated for the benefit of Taxpayer A and the children and grandchildren of Taxpayer B. The other 10 per cent is to be set aside for, allocated and distributed to certain charities. The trust assets are to be divided between the two sets of beneficiaries on a "pro rata" basis. Thus 90 per cent of IRA X must be used to fund the portion of Trust M set up for the benefit of Taxpayer A and Taxpayer B's children and grandchildren; the remaining 10 per cent of IRA X must be used to fund the portion of Trust M set aside for the benefit of the charitable beneficiaries thereof. Therefore, 90 per cent of IRA X may not be used for the benefit of the charities referenced in Trust M.

Therefore, based on the foregoing, with respect to ruling request one, we conclude: that required distributions with respect to the 90 per cent of IRA X paid to the wife (Taxpayer A), children, and grandchildren of Taxpayer B may be made in accordance with requirements of Code section 401(a)(9) and the proposed regulations promulgated thereunder without regard to any distribution(s) made from said IRA X to the charitable entity(ties) which is the beneficiary(ies) of the remaining 10 per cent of IRA X.

In this case, Taxpayer A, wife of Taxpayer B, is the oldest beneficiary of the 90 per cent share of Trust M which will be administered and distributed according to the provisions of Article II, section C, subsections 2 and 3. This is the separate trust share to which it is intended that IRA X be distributed. Therefore, with respect to ruling request two, we conclude: that the required distributions from the 90 per cent of Taxpayer B's IRA X, payable to Taxpayer A and Taxpayer B's children and grandchildren, will be computed according to Code section 401(a)(9)(B)(i) with the life of Taxpayer A as the measuring life.

This ruling is based on the assumption that IRA X meets the requirements Code section 408 at all times relevant thereto.

Please note that this ruling does not address the issues, if any, which arise under the "New" Proposed Regulations under Code section 401(a)(9) and 408(a)(6) which were published in the March 12, 2001 Internal Revenue Bulletin at 2001-1 I.R.B. 865.

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

Copies of this ruling have been sent to your authorized representatives pursuant to a power of attorney on file in this office.

Should you have any questions concerning this letter ruling, please contact T:EP:RA:T1.

Sincerely yours,

Manager, Employee Plans
Technical Group 1
Tax Exempt and Government
Entities Division

Enclosures:
Deleted Copy of the Ruling
Notice 437

cc:

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