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

200223065

MAR 11 2002

UICs: 401.06-00
401.06-02

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Trust C:

Company D:

State E:

Subtrust F:

Subtrust G:

Taxpayer H:

Taxpayer I:

IRA X:

IRA Y:

Date 1;

Date 2:

Date 3:

Date 4:

Date 5:

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

Taxpayer A, whose date of birth was Date 1, 1929, died on Date 2, 1996 prior to reaching his "required beginning date" as that term is defined in Code section 401(a)(9)(C). Taxpayer A would have attained age 70 ½ during calendar year 1999. Taxpayer A was survived by his spouse, Taxpayer B.

Prior to his death, Taxpayer A established an individual retirement arrangement, IRA X, with Company D. Taxpayer A maintained IRA X in his name until his death. Trust C was the named beneficiary of Taxpayer A's IRA X.

Your authorized representative has asserted on your behalf that Trust C is valid under the laws of State E, the state of Taxpayer A's domicile at his death. Additionally, your authorized representative asserts that Trust C became irrevocable upon the death of Taxpayer A. Article IX of Trust C is consistent with this representation.

Article II of Trust C provides, in relevant part, that if Taxpayer B were to survive Taxpayer A, the trustee(s) of Trust C shall set aside as a separate trust, Subtrust F, an amount equal to the maximum estate tax marital deduction reduced as provided therein. The provisions of Subtrust F provide for payments of income and principal to Taxpayer B generally as determined by the trustees of Subtrust F, Taxpayers B and H, but subject to Taxpayer B's limited right of principal withdrawal. Upon the death of Taxpayer B, Subtrust F is to terminate, and Subtrust F property shall be payable to the children, issue and intestate heirs of Taxpayer A as provided in Article III of Trust C.

Article II of Trust C further provides that the balance of the Trust C estate, as of the date of Taxpayer A's death, shall be set aside as a separate trust, Subtrust G. The provisions of Subtrust G provide that if Taxpayer I, the former spouse of Taxpayer A were to survive him, the trustee(s) of Subtrust G shall pay her $10,000 annually from income and, if necessary, principal of Subtrust G. The provisions of Subtrust G further provide for payments of income and principal to Taxpayer B generally as determined by the trustees of Subtrust G, Taxpayers B and H, but subject to Taxpayer B's limited right of principal withdrawal. Upon the death of Taxpayer B, Subtrust G is to terminate, and Subtrust G property shall be payable to the children, issue and intestate heirs of Taxpayer A as provided in Article III of Trust C.

Your authorized representative has asserted that Taxpayer I predeceased Taxpayer A.

Taxpayer B is the oldest potential beneficiary of either Subtrust F or Subtrust G. Taxpayer B's date of birth was Date 5, 1936. Thus, Taxpayer B attained age 61 during calendar year 1997 and, pursuant to Table V of section 1.72-9 of the Income Tax Regulations, her divisor with respect to 1997 was 23.3.

On Date 3, 1996, which date was approximately one month after Taxpayer A's date of death, Company D, the custodian of IRA X was provided documentation which indicated that Taxpayer A had died, that Trust C was the named beneficiary of IRA X, and that Taxpayer B was the primary beneficiary of Trust C. This documentation was signed, in part, by Taxpayers B and H, the co-trustees of Trust C.

On Date 4, 1996, which date was subsequent to the date of Taxpayer A's death, the amounts standing in IRA X were transferred, by means of a trustee to trustee transfer, to IRA Y, an IRA set up and maintained in the name of Taxpayer A for the benefit of the beneficiaries of Trust C. The documentation submitted to the Internal Revenue Service pertaining to IRA Y indicates that Taxpayer B was the primary beneficiary of Trust C and was intended to be the primary beneficiary of IRA Y. Distributions have been made from IRA Y to its intended beneficiary (beneficiaries) with respect to each calendar year beginning with 1997.

Your authorized representative has submitted correspondence to the Service in which it is asserted that, pursuant to the laws of State E, the trustee(s) of Trust C would breach their fiduciary responsibilities with respect to the beneficiaries of Trust C if they were to use IRA assets to pay either trust or funeral expenses. The correspondence also indicates that IRA Y assets have not been so utilized.

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

1. That Trust C is a "see-through" trust as that concept appears in section 1.401(a)(9) of the Proposed Income Tax Regulations;

2. That Taxpayer B, the oldest beneficiary of Trust C, is the designated beneficiary of Taxpayer A's IRA X and of IRA Y, the transferee IRA of IRA X;

3. that Code section 401(a)(9) required distributions from IRA Y need not have commenced before December 31 of the calendar year in which Taxpayer A would have attained age 70 ½ pursuant to Code section 401(a)(9)(B)(iv);

4. that if the Service is unable to issue a favorable response to ruling request 3, distributions to Trust C need not have commenced prior to December 31 of calendar year 1997, the calendar year following the calendar year of Taxpayer A's death; and

5. that, if the Service rules favorably with respect to ruling request 4, and not with respect to ruling request 3, then the Service will waive the excise tax due, if any, applicable to any failure(s) to distribute the minimum required distributions with respect to calendar year commencing with calendar year 1997.

With respect to your ruling requests, Code 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 Income Tax 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 401(a)(9)(B)(iv)(I) of the Code provides, in summary, that if the surviving spouse is the designated beneficiary of the employee, required distributions need not begin until the date on which the employee would have attained age 70 ½.

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.

Revenue Ruling 78-406, 1978-2 C.B. 157, provides, in general, 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 is not a rollover contribution. The revenue ruling states that this conclusion would apply whether the bank trustee initiates or the IRA participant directs the transfer of funds.

Rev. Rul. 78-406 is applicable if the trustee to trustee transfer is directed by the beneficiary of an IRA after the death of the IRA owner as long as the transferee IRA is set up and maintained in the name of the deceased IRA owner for the benefit of the beneficiary (or beneficiaries).

Revenue Procedure 89-52, 1989-2 C.B. 632, provides guidance with respect to IRAs maintained for the benefit of non-spouse beneficiaries of deceased IRA holders.

Code sections 4974(a) and (b) provide, in short, for the imposition of a 50% excise tax on the difference between a Code section 401(a)(9) minimum required distribution for a calendar year and the amount actually distributed for said calendar year. Code section 4974(d) provides that the Secretary may waive the tax imposed by Code section 4974(a) if the shortfall in amount distributed was due to reasonable error.

In this case, Taxpayer A died on Date 1, 1996, prior to attaining his Code section 401(a)(9) required beginning date. Taxpayer A maintained IRA X at his death. Taxpayer A named Trust C as the beneficiary of his IRA X. The documentation that accompanied this ruling request, and representations made by your authorized representative, indicate that Taxpayer A's' Trust C met the requirements of Qs and As D-5 through D-7 of the proposed regulations. Taxpayer B is the oldest beneficiary of Taxpayer A's Trust C. The amounts standing in IRA X at Taxpayer A's death have been transferred to IRA Y by means of a trustee-to-trustee transfer. IRA Y is being maintained in the name of Taxpayer A for the beneficiaries of his Trust C. As noted above, the documentation presented to the Service pertaining to IRA Y indicates that IRA Y was set up primarily for the benefit of Taxpayer B.

In this case, Taxpayer A timely named his Trust C as the beneficiary of his IRA X. Although the amounts standing in IRA X at Taxpayer A's death were transferred to IRA Y, IRA Y is maintained in the name of Taxpayer A for the benefit of his beneficiaries. Therefore, Trust C is the beneficiary of IRA Y.

Taxpayer B is the oldest identifiable beneficiary of Taxpayer A's Trust C. However, she is not the sole potential beneficiary of Trust C and, as such, is not the sole beneficiary to be considered for purposes of determining who is the designated beneficiary of Taxpayer A's IRA X

and of IRA Y. Thus, pursuant to section 1.401(a)(9)-1 of the proposed regulations, Q&A C-3(a), the commencement of required distributions to the beneficiaries of Trust C, the named beneficiary of IRA X and IRA Y, may not have been deferred until the end of calendar year 1999 but must have commenced prior to the end of calendar year 1997 pursuant to Code section 401(a)(9)(B)(iii) and to section 1.401(a)(9)-1 of the proposed regulations, Q&A C-3.

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

1. That Trust C is a "see-through" trust as that concept appears in section 1.401(a)(9) of the Proposed Income Tax Regulations;

2. That Taxpayer B, the oldest beneficiary of Trust C, is the designated beneficiary, as that term is used in Code section 401(a)(9) of Taxpayer A's IRA X and of IRA Y, the transferee IRA of IRA X;

3. that the commencement of Code section 401(a)(9) required distributions from IRA Y could not have been deferred until December 31 of the calendar year in which Taxpayer A would have attained age 70 ½ (calendar year 1999) pursuant to Code section 401(a)(9)(B)(iv); and

4. that, pursuant to Code section 401(a)(9)(B)(iii) and section 1.401(a)(9)-1 of the proposed regulations, Q&A C-3, required distributions to Trust C must have commenced no later than December 31 of calendar year 1997, the calendar year following the calendar year of Taxpayer A's death; and

5. Since the Employee Plans technical Office of the National Office of the Internal Revenue Service does not have the authority to issue rulings granting waivers of the excise tax imposed by Code section 4974, we are unable to respond to your fifth ruling request (see section 6.02 of Revenue Procedure 2002-4, 2001-1 I.R.B. 127, 136 (January 7, 2002).

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. It also assumes that the transferee IRA, IRA Y, either has or will comply with the requirements of Code section 408(a) at all times relevant thereto.

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.

The author of this letter ruling is of this Group who can be reached at . His ID Number is.

200223065

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