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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR 18 2002 200228025

UIL: 401.00-00
408.00-00

T:EP:RA:T3

Legend:

Trustor =

Trust X =

Grandchildren =

Contingent Beneficiaries =

IRA Accounts =

Bank X =

State S =

Bank Y =

This is in response to a request for a private letter ruling dated May 1, 2001, as revised and supplemented by subsequent letters, submitted on your behalf by your authorized representative. In support of your request, your authorized representative has submitted the following facts and representations.

Trustor was born on May 13, 1933 and died on December 29, 1999. Prior to her death she had established four IRA accounts (the IRA Accounts) at Bank Y. She named Trust X as the beneficiary of the IRA Accounts. Upon her death the IRA Accounts are distributable to Trust X. Trust X is valid under state law and became irrevocable upon the death of Trustor. Bank X, as trustee of Trust X, had a complete copy of the original Trust X document and a complete copy of the first amendment to Trust X. The primary beneficiaries of Trust X are the Trustor 's two minor grandchildren, (Grandchildren). Trust X provides that distributions to them will be made in the discretion of the trustee for their support, health and maintenance until age thirty, at which time,

each such beneficiary may withdraw his entire share. If either such beneficiary should die before age thirty, the entire amount will be distributed to the other such beneficiary. However, if both such beneficiaries die before the age of thirty, Trust X, in its entirety, will be distributed to contingent beneficiaries (Contingent Beneficiaries) who are much older. As of December 31 of the year following Trustor's death, the oldest contingent beneficiary named in the trust was 67 and was born July 21, 1933.

Trust X contains provisions for the payment of funeral and last illness expenses as well as provisions for the payment of taxes and trust administration expenses. It is represented that under the applicable provisions of the law of State S, the trustee would be precluded from using IRA assets for all such purposes when other assets are available. It is further represented that Trust X was vested with substantial non-IRA assets and the trustee has at all times recognized its duty to pay all expenses from the non-IRA assets and continues to believe that it must not pay any debts or expenses from the IRA assets.

The following rulings have been requested:

(1) That a transfer of the IRA Accounts in a custodian to trustee transfer to one or more special IRA accounts in the name of Trustor with Bank X as IRA trustee, payable to Bank X as trustee of Trust X for the benefit of all primary and Contingent Beneficiaries thereof is not a taxable distribution.

(2) That commencing in the year 2000, the required minimum distributions from the IRA Accounts payable to Bank X as trustee of Trust X must be based on the life expectancy of the oldest beneficiary, including Contingent Beneficiaries, named in Trust X.

Section 408(a) of the Internal Revenue Code defines an individual retirement account as a trust which meets the requirements of sections 408(a)(1) through 408(a)(6). Section 408(a)(6) of the Code states 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. Section 401(a)(9) of the Code sets forth the general rules applicable to required minimum distributions from qualified plans.

Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A D-2A, provided 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 provided 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, provided 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) of the Code 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 provided, 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(f), in short, provided that the beneficiary of a plan or IRA may not change the beneficiary of said plan or IRA. If such a change occurs, the employee/plan participant or IRA holder will be treated as not having designated a beneficiary.

The facts of this case summarized above, indicate that Trust X is a valid trust which became irrevocable at the death of Trustor. The beneficiaries of the trust are identified in the Trust X document and Bank X has a copy of Trust X and its first amendment. It is further represented that Trust X will remain the beneficiary of the IRA Accounts after the proposed transfer and therefore no change of beneficiary is contemplated. In addition, It is represented that IRA assets distributed to Trust X will not be used for the payment of expenses and that all the beneficiaries of the payments from the IRA Accounts to Trust X are individuals. Thus, the problem of non-individual beneficiaries does not arise.

Section 408(d)(1) of the Code provides that except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan, including an IRA, shall be included in gross income by the payee or distributee in the manner provided under section 72. Revenue Ruling 78-406, 1978-2 C.B. 157, provides 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 does not constitute a rollover. Furthermore, the revenue ruling states that its conclusion will apply whether the transfer is initiated by the bank trustee or the IRA holder. However, the application of Revenue Ruling 78-406 to the subject transfer is contingent upon the transferee IRA being set up in the name of the deceased IRA owner for the benefit of the beneficiary, as is the case in this request. Accordingly, with respect to ruling request one, it is concluded that a transfer of the IRA Accounts in a custodian to trustee transfer to one or more special IRA accounts in the name of Trustor with Bank X as IRA trustee, payable to Bank X as trustee of Trust X for the benefit of all primary and Contingent Beneficiaries thereof is not a taxable distribution.

Section 401(a)(9)(A)(ii) of the Code 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).

Under section 401(a)(9)(B)(ii) of the Code, if an employee dies before distribution has begun in accordance with section 401(a)(9)(A)(ii), the entire interest of the employee must be distributed within five years after the death of the employee.

Section 401(a)(9)(B)(iii) of the Code provides an exception to the five-year rule if any portion of an employee's interest is payable to a designated beneficiary over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary) and such distributions begin not later than one year after the date of the employee's death. Section 1.401(a)(9)-1 of the Proposed Regulations Q&A-C-3 provides that the exception provided in section 401(a)(9)(B)(iii) of the Code will be satisfied if the distributions to a non-spouse beneficiary begin on or before December 31 of the calendar year immediately following the year in which the employee dies.

In this case, benefits were payable to Trust X for the benefit of the designated beneficiaries at the date of Trustor's death and distributions from the IRA Accounts to Trust X commenced before December 31, 2000. Therefore distributions to Trust X will qualify for the exception to the five-year rule under section 401(a)(9)(B)(iii) of the Code.

.Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A-E-5(a)(1), 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.

Section 1.401(a)(9)-1, Qs&As, of the Proposed Regulations E-5(b) and E-5(e)(1), provide rules governing contingent beneficiaries. Pursuant to these sections of the regulations, beneficiaries whose entitlement to the employee's benefit is contingent on any event other than the death of a "prior" beneficiary must be considered for purposes of determining which beneficiary has the shortest life expectancy and, as such, who is the designated beneficiary for purposes of section 401(a)(9) of the Code. In this case, the discretion the trustee of Trust X has with respect to the payment of trust amounts to the Grandchildren, who are the primary beneficiaries, is a contingency over and above the death of a prior beneficiary. The Trust X language does not require that the payments from the IRA Accounts be paid to the Grandchildren on an annual basis and therefore Trust X language does not preclude there being an accumulation of distributions from the IRA Accounts. Under such circumstances, the Contingent Beneficiaries must be considered in determining the beneficiary with the shortest life expectancy. Accordingly, with respect to ruling request two, it is concluded that commencing in the year 2000, the required minimum distributions from the IRA Accounts payable to Bank X as trustee of Trust X must be based on the life expectancy of the oldest beneficiary, including Contingent Beneficiaries, named in Trust X.

The above rulings are contingent upon the continued compliance of the IRA Accounts and any transferee IRAs with section 408 of the Code

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

The author of this ruling is who may be reached at (202) 283-9632.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3
Tax Exempt and Government
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Enclosures:
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Form 437