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

200234074

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAY 28 2002

UIC: 401.06-02

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Accountant D:

Law Firm E:

City F:

State G:

Taxpayer H:

Taxpayer I:

Taxpayer J:

Date 1:

Date 2:

Month 3:

Date 4:

Date 5:

Date 6:

Date 7:

200234074

IRA U:

Roth IRA V:

Trust W:

Subtrust X:

Subtrust Y:

Sum 1:

Sum 2:

Sum 3:

Sum 4:

Company M:

Dear :

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

Taxpayer A was married to Taxpayer B. Taxpayer A and B filed a joint Federal Income Tax Return with respect to calendar year .

During , , Taxpayer A converted his traditional individual retirement arrangement (IRA), IRA U, in the amount of Sum 1, to Roth IRA V.

IRA U and Roth IRA V either were or are maintained with Company M.

As noted above, Taxpayers A and B filed a joint federal Income Tax Return. Such return was timely filed after Taxpayers A and B received an extension to file. On their Federal Income Tax Return, which was completed by their accountant, Accountant D, Taxpayers A and B reported a modified adjusted gross income of less than . Thus, at the time, Taxpayer A believed that his conversion of IRA U to Roth IRA V was in compliance with the rules under Code section 408A.

On Date 1, , Taxpayer A named Trust W as the beneficiary of his Roth IRA V. Section 1.1 of Trust W provides that it becomes irrevocable as the death of Taxpayer A. Articles III, IV and V of Trust W provide that, upon the death of Taxpayer A, Subtrusts X and Y shall be created. Section 3.2 of Trust W provides, in relevant part, that to the extent other assets which qualify for the marital deduction are available, assets which constitute income in respect of a decedent shall not be allocated to Subtrust X.

Taxpayer B is the sole beneficiary of Subtrust X. Section 4.1 of Trust W, which describes payments from Subtrust X, provides that the trustee of Trust W shall pay to Taxpayer B, as Taxpayer A's surviving spouse, in convenient installments, at least quarterly, all of the net income from Subtrust X and as much principal as Taxpayer B from time to time requests in writing.

Section 5.1 of Trust W, which describes payments from Subtrust Y, provides that the trustee of Trust W shall pay to Taxpayer B, as Taxpayer A's surviving spouse, in convenient installments, at least quarterly, all of the net income from Subtrust Y, and, after the principal of Subtrust X is exhausted, so much of the principal as the trustee from time to time believes desirable for Taxpayer B's reasonable support and health considering Taxpayer B's other resources known to the trustee. Section 5.2 of Trust W provides that, upon Taxpayer B's death, the trustee of Trust W shall divide the entire Subtrust Y estate into shares equal in value to each then living child of Taxpayer A. Each share shall be distributed outright to the appropriate then living child.

Your authorized representative has asserted that Trust W is valid under the laws of State G.

Your authorized representative has asserted, on your behalf, that Company M, the custodian of Roth IRA V, has accepted the Date 1, , beneficiary designation of said Roth IRA and will apply said beneficiary designation to any traditional IRA into which Roth IRA V will be recharacterized. Furthermore, said action on the part of Company M will comply with the laws of State G.

Taxpayer A died on Date 2, while a resident of State G. Since Taxpayer A was born on Date , he had not attained age as of his death of death.

Subsequent to Date 2, , Taxpayer A's wife, Taxpayer B, who is the executrix of Taxpayer A's estate, provided Accountant D with financial information relating to Taxpayer A's estate and to the income tax returns of Taxpayers A and B. After receiving such information, during Month 3, Accountant D advised Taxpayer B that the modified adjusted gross income of Taxpayers A and B for calendar year exceeded $, and that, as a result, Taxpayer A was ineligible to convert his IRA U to Roth IRA V.

Subsequent to the above, but also during Month 3, , Law Firm E advised Taxpayer B that, pursuant to Announcement 99-104, Roth IRA V had to be reconverted to a traditional IRA by . On , Taxpayer C, Taxpayer A's son, FAXed a letter, which had been signed by Taxpayer B, to the City F, office of Company M, in which Taxpayer B directed Company M to recharacterize Roth IRA V as a traditional IRA. Taxpayer A had maintained his Roth IRA V in the City F, office of Company M. Company M did not recharacterize Roth IRA V as a traditional IRA by the end of calendar year and, as of the date of this ruling request, had not so recharacterized.

As of the date of this ruling request, no amended Federal Income Tax Return has been filed.

As noted above, Taxpayers A's and B's Federal adjusted gross income for (calendar year) exceeded $

A request for relief under section 301.9100-3 of the Procedure and Administration Regulations has been made.

Your authorized representative has asserted that IRA assets totaling approximately Sum 2 were available to fund Trust W. Of that amount, approximately Sum 3 was required, pursuant to section 3.2 of Trust W, to fund Subtrust Y.

On Date 4, , which was within nine (9) months of the date of death of Taxpayer A, Taxpayer B filed a written disclaimer with the appropriate State G office disclaiming her interest in Subtrust Y. Additionally, on Date 5, , which was also within nine months of the date of death of Taxpayer A, Taxpayer filed a written disclaimer with the appropriate State G office disclaiming any benefits under the fractional portion of Taxpayer A's date of death value of his Roth IRA V to which she may be entitled as a potential beneficiary of Subtrust Y. Your authorized representative has asserted that the Date 4, and Date 5, disclaimers were valid under the laws of State G. Furthermore, your authorized representative has asserted that, pursuant to the laws of State G, with respect to the disclaimed property, Taxpayer B is treated as having predeceased Taxpayer A.

Your authorized representative has asserted, and the disclaimers, referenced above, indicate that Taxpayer B had accepted no benefits in or under Subtrust Y prior to filing said disclaimers.

As a result of the disclaimers references above, Taxpayer A's children, Taxpayers H, I and J, became the sole beneficiaries of Subtrust Y. Taxpayer B is older than Taxpayer H, Taxpayer I, and Taxpayer J.

On Date 5, , a written list of the beneficiaries of Subtrusts X and Y was provided to the custodian of Roth IRA V. This Date 5, , letter also indicated that a copy of the Trust W document would be provided to the Roth IRA V custodian upon demand.

The statutes of State G provide, in relevant part, that IRA accounts are exempt from the claims of creditors. As a result, no portion of the Roth IRA V account has been used, or will be used, to pay any funeral, administrative etc. expenses associated with the death of Taxpayer A.

Subtrusts X and Y were funded on Date 7, Subtrust Y was funded with approximately Sum 4. Your authorized representative has asserted, on your behalf, that Subtrust Y had to have been funded with assets in the amount of Sum 4. Furthermore, your authorized representative has asserted that Sum 4 included amounts from three IRAs, including Roth IRA V, and that the amount allocated to Subtrust Y included appreciation on the date of death value of each of the IRAs computed until 7, Your authorized representative has asserted that said allocation of appreciation was required under Federal and State G tax laws. In short, your authorized representative has asserted that the trustee of Trust W was required to fund Subtrust Y with Sum 4 assets.

Based on the above, you, through your authorized representative, request the following letter ruling:

1. That, Trust W, the beneficiary of Roth IRA V, shall be treated as the beneficiary of the traditional IRA referenced in ruling request one into which Roth IRA V either was or shall be transferred in order to effectuate any recharacterization authorized by section 301.9100-3 of the Procedure and Administration Regulations.

With respect to your ruling request, Code section 408A(c)(5) provides, in short, that the required distribution rules of Code section 401(a)(9), made applicable to IRAs pursuant to Code section 408(a)(6) shall not apply to distributions from a Roth IRA prior to the death of the Roth IRA holder.

Section 1.408A-6 of the Income Tax Regulations, Question and Answer-14(b), provides, in general, that the minimum distribution apply to a Roth IRA as through the Roth IRA owner died prior to his required beginning date. Thus, generally, the entire Roth IRA interest must be distributed by the end of the fifth calendar year after the year of the Roth IRA owner's death unless the interest is payable to a designated beneficiary over a period not greater than the beneficiary's life expectancy and distributions commence not later than the end of the calendar year following the calendar year of the Roth IRA owner's death.

With respect to distributions required for calendar years prior to 2001, section 1.401(a)(9)-1 of the 1987 Proposed Income Tax Regulations (hereinafter "1987" Regulations), Question and Answer D-2A, provided, in short, that only individuals may be designated beneficiaries for purposes of 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, 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 "1987" 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) 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 "1987" 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 "1987" proposed regulations, Q&A H-2, provided guidance with respect to whether a plan participant's (IRA holder's) benefit under a plan or IRA may be divided into separate accounts for purposes of Code section 401(a)(9). The requirements include dividing said plan or IRA account into more than one account by using acceptable separate accounting including allocating investment gains and losses, and contributions and forfeitures, on a pro-rata basis in a reasonable and consistent manner between accounts. If such requirements are met, the Code section 401(a)(9) distribution period and amount of required distributions with respect to one account will be computed without regard to the period and amount with respect to the other accounts.

In this case, the documentation which accompanied this ruling request and representations made by your authorized representative indicate that, with respect to Trust W, and the Subtrusts created thereunder, there has been compliance with the requirements of section 1.401(a)(9)-1 of the "1987" proposed regulations, Qs&As D-5 through D-7. Thus, the beneficiaries of Trust W and Subtrusts X and Y may be treated as potential designated beneficiaries with the life expectancy of the eldest thereof being used for purposes of determining the distribution period with respect to any IRA of which it, Trust W, is the beneficiary thereof.

The issue presented is whether the trust beneficiary of a Roth IRA which holds amounts transferred from a traditional IRA in violation of the income limitation rule found in Code section 408A(c)(3)(B) may be treated as the beneficiary of a traditional IRA into which the Roth IRA amounts will be transferred to effectuate the recharacterization authorized by the Service's response to the first ruling request.

The Service notes that the trustee of Trust W and the custodian of IRA U and Roth IRA V will treat the beneficiary of Roth IRA V as the beneficiary of the traditional IRA into which Roth IRA V will be converted, and the actions of the trustee and custodian are consistent with the laws of State G. Thus, the Service will also treat the beneficiary of Roth IRA V as the beneficiary of the "new" traditional IRA for purposes of Code section 401(a)(9) since any other conclusion would be impractical .

Additionally, upon analyzing the information provided, the Service is of the opinion that, for purposes of Code section 401(a)(9), the amount of Roth IRA V which will be characterized as a "new" traditional IRA allocated to Subtrust Y may be treated as an account separate from the portion of said Roth (or traditional) IRA allocated to Subtrust X.

Furthermore, in this case, as a result of Taxpayer B's disclaimer of her interest in Subtrust Y, the assets allocated to Subtrust Y, including IRA amounts, are payable to the then living children of Taxpayer A, Taxpayers H, I, and J. The provisions of Trust W required that the Subtrust Y estate, including any IRA allocated to Subtrust Y, must be divided into equal, distinct, shares, with a share payable to each of the three beneficiaries of Subtrust Y. Thus, each beneficiary of Subtrust Y will receive a portion of the amounts allocated to Subtrust Y without regard to the portions allocated to the other two beneficiaries. Under this fact pattern, each beneficiary's share of Roth IRA V (and the recharacterized traditional IRA) may be treated, for purposes of Code section 401(a)(9), as an account separate from the accounts of the remaining beneficiaries.

Therefore, with respect to your second ruling request, we conclude as follows:

That Trust W, the beneficiary of Roth IRA V, shall be treated as the beneficiary of any traditional IRA into which Roth IRA V either was transferred or shall be transferred in order to effectuate any recharacterization authorized by section 301.9100-3 of the Procedure and Administration Regulations. Furthermore, each beneficiary of Subtrust Y may be treated as the designated beneficiary, as that term is used for purposes of Code section 401(a)(9), of the share of Roth IRA V and the transferee traditional IRA allocated to Subtrust Y and subsequently separately allocated to him or her. Thus, each beneficiary of Subtrust Y may have distributions from his or her separate share of Roth IRA V (and the transferee traditional IRA) computed using his or her life expectancy without regard to the life expectancies of the other beneficiaries .

This letter is directed only to the taxpayers who requested it. Section 6100(j)(3) of the Code provides that it may not be used or cited as precedent.

This letter ruling assumes that all of the IRAs referenced herein will meet the requirements of either Code section 408 or Code section 408A (to the extent applicable, if any) at all times relevant thereto.

This ruling letter was prepared by Lawrence W. Heben (ID: 50-03192) of this Group. He may be contacted at (202) 283-9618.

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

Sincerely yours,

Lawrence W. Helm
For

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

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose