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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEC 19 2002

UICs: 401.06-00
401.06-02

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Trustee C:

Taxpayer D:

Taxpayer E:

Trust T:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

IRA X:

IRA W:

Company M:

State N:

Dear Ms. :

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

Taxpayer A, whose date of birth was Date 1, 1942, died on Date 2, 2002, at age 60. As of his date of death, Taxpayer A was the owner of IRA X maintained with Company M.

On Date 4, 1999, Taxpayer A signed and adopted Trust T for the benefit of his three children, Taxpayer B, Taxpayer D, and Taxpayer E. Taxpayer B's date of birth was Date 3, 1987. Taxpayer D is the eldest of Taxpayers B, D, and E. Taxpayer C is the Trustee of Trust T.

Taxpayer B was alive as of the date of this ruling request.

The provisions of Trust T provide, in relevant part, that Trust T is intended to be the beneficiary of an individual retirement arrangement (IRA) maintained by Taxpayer A. The terms of Trust T further provide, that upon the death of the Trustor, the Trustee shall divide the trust estate into equal shares, one (1) for Taxpayer B if he is then living. Each share shall constitute a separate trust and shall be held and administered as such. The terms of Trust T also provide that the Trust T trustee is required to maintain separate accounts on a pro rata basis in accordance with Proposed Treasury Regulation 1.401(a)(9)-1, Q&A H-2(b), for the separate beneficiaries of Trust T. Finally, the terms of Trust T provide that its Trustee shall withdraw from the beneficiary's share of any IRA and distribute to the beneficiary such beneficiary's share of the minimum distribution required to be distributed annually from the IRA.

On Date 5, 1999, Taxpayer A signed a beneficiary designation with respect to his IRA X pursuant to which IRA X was to be distributed to the trustee of Trust T at the death of Taxpayer A. Said beneficiary designation provides, in relevant part, that Trust

T is to be divided into equal accounts for three beneficiaries named therein. Taxpayer B is one of the three named beneficiaries. The beneficiary designation also provides that the Trust T trustee may establish separate IRAs in the name of Taxpayer A for the benefit of the three above-referenced named beneficiaries. In effect, the trustee of Trust T was authorized to establish a separate IRA for the benefit of Taxpayer B.

Your authorized representative has asserted that Trust T and the separate trusts created under its terms are valid under the laws of State N. He has also asserted that Trust T and the separate trusts created under its terms became irrevocable upon the death of Taxpayer A. Company M was provided with a copy of Trust T and of the related beneficiary designation prior to the death of Taxpayer A.

Your authorized representative has provided the Service with documentation which indicates that, prior to Date 6, 2002, IRA X was subdivided into three IRAs after the death of Taxpayer A. Each posthumously created IRA is titled in the name of Taxpayer A (Deceased) for the benefit of a distinct individual. Thus, one IRA (IRA W) is titled Taxpayer A (Deceased) for the benefit of the Trust for Taxpayer B. IRA W has an Account Number which is different from the Account Numbers assigned to the IRAs maintained for the benefit of Taxpayer A's other two children.

Additionally, documentation provided by your authorized representative indicates that the trust created for the benefit of Taxpayer B under the terms of Trust T has a Taxpayer Identification Number which is different from the Taxpayer Identification Numbers assigned to the trusts created for the benefit of Taxpayer A's other children.

Your authorized representative has asserted on your behalf that the one-third of IRA X which became IRA W after IRA X was subdivided is payable to the subtrust created under the terms of Trust T for the benefit of Taxpayer B. Your authorized representative asserts that distributions from IRA W have not been made, are not being made, and will not be paid to Trust T.

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

1. That, for purposes of Code § 401(a)(9), IRA X may be subdivided into three (3) sub-IRAs with each IRA held in the name of Taxpayer A (Deceased) for the benefit of a separate beneficiary-in this case, Taxpayer B; and

2. that required distributions from the sub-IRA maintained in the name of Taxpayer A for the benefit of Taxpayer B may be paid over the remaining life expectancy of Taxpayer B.

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.

Code § 401(a)(9)(B)(ii) provides, in general, that if a plan participant (IRA holder) dies before the distribution of his interest has begun in accordance with subparagraph (A)(ii) (prior to his required beginning date), then his entire interest must be distributed within 5 years of his death.

Code § 401(a)(9)(B)(iii) provides, in general, that if any portion of the interest of a deceased plan participant (IRA holder) is payable to (or for the benefit of a designated beneficiary), such portion will be distributed beginning not later than 1 year after the date of the deceased's death (or a later date as prescribed by the Secretary under Regulations) in accordance with regulations over the life of the designated beneficiary (or a period not extending beyond the life expectancy of the 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.

With respect to your ruling requests, "Final" Income Tax Regulations under Code sections 401(a)(9) and 408(a)(6) were published in the Federal Register at 67 Federal Register 18987-19028 (April 17, 2002), and in the Internal Revenue Bulletin at 2002-19 I.R.B. 852 (May 13, 2002). The Preamble to the "Final" Regulations, in relevant part, provide that the regulations apply for determining required minimum distributions for calendar years beginning after January 1, 2003. For determining required distributions for calendar year 2002, taxpayers may rely on the 1987 proposed regulations, the 2001 proposed regulations, or the "Final" Regulations..

§ 1.401(a)(9)-3 of the "Final" regulations, Q&A-3(a) provides, in general, that, with respect to the life expectancy exception to the 5-year rule described in Code § 401(a)(9)(B)(iii), and in A-1, distributions are required to begin to a non-spouse beneficiary on or before the end of the calendar year immediately following the calendar year in which the employee died.

§ 1.401(a)(9)-5 of the "Final" regulations, Q&A-5(b), provides, in general, that if an employee dies before his required beginning date, in order to satisfy the requirements of Code § 401(a)(9)(B)(iii) or (iv) and the life expectancy rule described in A-1 of § 1.401(a)(9)-3, the applicable distribution period for distribution calendar years after the distribution calendar year containing the employee's date of death is determined in accordance with paragraph (c) of this A-5.

§ 1.401(a)(9)-5 of the "Final" regulations, Q&A-5(c)(1), provides, in general, that, with respect to a non-spouse beneficiary, the applicable distribution period measured by the beneficiary's remaining life expectancy is determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the employee's death. In subsequent calendar years, the applicable distribution period is reduced by one for each calendar year that has elapsed after the calendar year immediately following the calendar year of the employee's death.

§1.401(a)(9)-4 of the "Final" regulations, Q&A-4, provides, in relevant part, that in order to be a designated beneficiary, an individual must be a beneficiary as of the date of (the employee's or IRA holder's) death. Generally, an employee's designated beneficiary will be determined based on the beneficiaries designated as of the date of death who remain beneficiaries as of September 30 of the calendar year following the calendar year of death.

§1.401(a)(9)-4 of the "Final" regulations, Q&A-3, 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-5 of §1.401(a)(9)-4 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 within the meaning of A-1 of this section from the trust instrument.

(4) The documentation described in A-6 of this section has been provided to the plan administrator.

§ 1.401(a)(9)-4 of the "Final" regulations, Q&A-6(b), provides, generally, with respect to required minimum distributions after the death of the employee, that documentation described therein must be provided by the trustee of the trust/beneficiary to the plan administrator by October 31 of the calendar year following the calendar year in which the employee died.

§ 1.401(a)(9)-8 of the "Final" Regulations, Q&A-2(a) provides the "separate account" rules with respect to defined contribution plans. A "separate account" is an account under which the beneficiary or beneficiaries differ from the beneficiary or beneficiaries of the other accounts. In general, if separate accounts are set up, for years subsequent to the calendar year containing the date on which the separate accounts were established, or the date of death if later, a separate account under a plan is not aggregated with the other separate accounts under the plan in order to determine whether the distributions from such separate account satisfy the requirements of Code § 401(a)(9). Instead, the rules in Code § 401(a)(9) apply separately to each separate account under the plan.

§ 1.401(a)(9)-8 of the "Final" Regulations, Q&A-3, provides that a separate account is a separate portion of an employee's benefit which reflects the separate interest of an employee's beneficiary under the plan as of the employee's death for which separate accounting is maintained. The separate accounting must allocate all post-death investment gains and losses, contributions and forfeitures, for the period prior to the establishment of the separate accounts on a pro-rata basis in a consistent and reasonable manner among the separate accounts.

§ 1.401(a)(9)-4 of the "Final" Regulations, Q&A-5(c), provides, in relevant part, that the separate account rules under A-2 of § 1.401(a)(9)-8 are not available to beneficiaries of a trust with respect to the trust's interest in the employee's benefit.

As previously noted, taxpayers are permitted to compute minimum required distributions for calendar year 2002 in accordance with the "Final" Regulations referenced above.

As noted above, if distributions are made to a trust, even if the trust is a "see-through" trust within the meaning of Q&A-5 of §1.401(a)(9)-4 of the "Final"

Regulations, the separate account rules of A-2 of § 1.401(a)(9)-8 of the "Final Regulations" are not available to the beneficiaries of the trust. Thus, in general, each beneficiary of a trust must receive minimum required distributions over the life expectancy of the eldest beneficiary.

The issue raised in this ruling request is whether the general rule, above, applies where IRA distributions are made directly to a subtrust created under the terms of a trust.

In this case, distributions from IRA W, which was created for and is being maintained for the benefit of Taxpayer B, are being made directly to the subtrust created under the terms of Trust T for Taxpayer B's benefit and are not being paid to Trust T. Taxpayer B is the only beneficiary of the subtrust created for his benefit. However, the facts presented in this case indicate that the subtrust for the benefit of Taxpayer B was created by the trustee of Trust T pursuant to the terms of Trust T. Furthermore, as noted above, the terms of Trust T provide that the trustee thereof is charged with the responsibility of creating separate accounts.

Although neither the Code nor the "Final" Regulations promulgated under Code § 401(a)(9) preclude the posthumous division of IRA X into three IRAs, including IRA W, the "Final" Regulations do preclude "separate account" treatment for Code § 401(a)(9) purposes where amounts pass through a trust. In this case, amounts pass through a trust. Thus, even though IRA X has been divided into three IRAs, including IRA W, the life expectancy of the eldest beneficiary of all of the IRAs, not merely IRA W, is the life expectancy to be used to determine the Code § 401(a)(9) payout period for distributions from IRA W. TP D is said eldest beneficiary.

Thus, based on the specific facts and representations surrounding this ruling request, we conclude as follows:

1. That, for purposes of Code § 401(a)(9), IRA X may be subdivided into three (3) sub-IRAs with each IRA held in the name of Taxpayer A (Deceased) for the benefit of a separate beneficiary-in this case, Taxpayer B; and

2. that, IAW § 1.401(a)(9)-8 of the "Final" Regulations, Q&A-2(a), and § 1.401(a)(9)-4 of the "Final" Regulations, Q&A-4(c), required distributions from the IRA (IRA W) maintained in the name of Taxpayer A (Deceased) for the benefit of Taxpayer B must be paid over the remaining life expectancy of Taxpayer D.

This ruling letter is based on the assumption that IRAs X and W either have met, are meeting, or will meet the requirements of Code § 408 at all times relevant thereto. It

also assumes that Trust T, and the subtrusts created thereunder, are valid under the laws of State N as represented.

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

This letter is directed only to the taxpayer that requested it and is based solely on the representations made with respect thereto. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

Frances V. Sloan

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