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

199912041

DEC 30 1998

Uniform Issue List Numbers: 401.06-00; 408.06-00

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ATTN: **********
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Legend:

Individual A = **********
Surviving Spouse = **********
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Beneficiary B = **********
Beneficiary C = **********
Trust D = **********
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Trustee = **********
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Individual Retirement Arrangement ("IRA") = **********
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State E = ********

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Ladies and Gentlemen:

This is in response to a letter dated March 20, 1998, as supplemented by additional correspondence dated October 19, October 21, October 29, November 3, December 3, and December 23, 1998, in which your authorized representative requested private letter rulings on your behalf and in your capacity as Trustee of Trust D, named above, regarding the effect of certain distributions from Trust D under sections 401(a)(9) and 408(d) of the Internal Revenue Code. In furtherance of your ruling request, you have submitted the following statements and representations:

On **********, Individual A executed Trust D, a revocable living trust; Trust D was amended and restated on ********** ****, with additional amendments dated *********, ****, and *******, ****. Trust D is a valid trust under the laws of State E, and became irrevocable by its terms as of *******, ****, upon Individual A's death. At the time of death, Individual A was 63 years old.

You have represented that, at the time of death, Individual A owned a qualified individual retirement arrangement (IRA) with assets totaling approximately $******** On ********, ****, Individual A (hereinafter, the "Decedent") designated Trust D as the IRA's beneficiary. This beneficiary designation was in effect at the time of the Decedent's death. In January, ****, the assets of the Decedent's IRA were transferred directly into another IRA administered by the Trustee of Trust D. The Trustee/IRA custodian was informed of the Decedent's beneficiary designation, and was provided copies of the trust document.

After full funding and settlement of mortgage payments and various other specific bequests and estate expenses, Trust D provides that the balance of the trust estate will constitute a "Residuary Trust Estate" for the benefit of the Decedent's Surviving Spouse, to be referred to as the "Marital Trust." The Decedent's Surviving Spouse is the primary beneficiary of the Marital Trust, and is entitled to all the income from that trust on a quarterly basis, or at more frequent intervals as the Trustee deems necessary or appropriate. The Marital Trust, as amended contains an additional proviso that, if its annual income does not equal or exceed $**********, the difference between the Marital Trust's income and the specified amount should be paid to the Decedent's Surviving Spouse out of principal. Also, the Trustee of the Marital Trust has the discretion to distribute additional principal as needed from the Trust for the Surviving Spouse's health, support, and maintenance. The Trustee of Trust D has received a copy of the Trust.

Your authorized representative has asserted that the IRA assets cannot be used to satisfy any of the Trust D specific bequests.

After the death of the Surviving Spouse, the Marital Trust's remaining assets, if any, are to be distributed to Beneficiaries B and C, descendants of the Decedent and the Surviving Spouse, or to their then living descendants, if either B or C predeceases the Surviving Spouse. In pertinent part, State E statutes provide that any interest of any participant or beneficiary in a retirement or profit-sharing plan that is qualified under § 408 of the Code is exempt from all claims of creditors of the beneficiary or participant. Pursuant to this statutory requirement, all of the expenses and charges against Trust D have been fully funded with assets other than the Decedent's IRA, and the assets of that IRA must be used exclusively to fund the Marital Trust provided for by Trust D.

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

1. Even though Trust D is named as the beneficiary of the Decedent's IRA, the Surviving Spouse is treated as the "designated beneficiary" of the Decedent's IRA as of the date of the Decedent's death, for purposes of determining the distribution period for payment of benefits from the Decedent's IRA under § 401(a)(9) of the Code.

2. That, beginning no later than December 31, 1998, distributions made from the Decedent's IRA to the Marital Trust over the life of the Surviving Spouse, or over a period not extending beyond the life expectancy of the Surviving Spouse, are in accordance with § 401(a)(9)(B)(iii) of the Code, as interpreted by § 1.401(a)(9)-1, Q&A C-3(a) of the Proposed Income Tax Regulations ("Proposed Regs.").

Section 408(a)(6) of the Code and § 1.408-8, Q&A A-1, of the Proposed Regs. provide that, under regulations prescribed by the Secretary, IRAs are subject to distribution rules similar to the rules provided in § 401(a)(9) of the Code and § 1.401(a)(9)-1 of the Proposed Regs for qualified plans. The incidental death benefit requirements also shall apply to the distribution of the entire interest of an individual for whose benefit an IRA is maintained.

Section 401(a)(9)(A) generally provides that a plan will not be qualified under § 401(a) unless that 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 joint lives of such employee and a designated beneficiary, or over a period not extending beyond the life expectancy of such employee (or the joint life expectancies of such employee and a designated beneficiary).

Section 401(a)(9)(C)(i) and (ii) of the Code defines the term "required beginning date" (as applied to IRAs) as April 1 of the calendar year immediately following the calendar year in which an employee or a former employee attains age 70½.

Section 401(a)(9)(B)(ii) generally provides that a plan is not qualified under § 401(a) unless the plan provides that, if an employee dies before distribution of the employee's interest has begun in accordance with § 401(a)(9)(A)(ii), the entire interest of the employee will be distributed within five years after the date of the death of such employee ("five-year rule"). Section 1.401(a)(9)-1, Q&A C-2 of the Proposed Regs. states, in part, that in order to satisfy the five-year rule, the former employee's interest must be distributed by 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 five-year rule if certain amounts are payable over the life of a designated beneficiary. The exception applies if (I) any portion of the employee's interest is payable to (or for the benefit of a designated beneficiary), (II) such portion will be distributed (in accordance with the regulations) over the life of such designated beneficiary, and (III) such distributions begin not later than one year after the date of the employee's death or such later date as the Secretary may prescribe by regulations. Section 1.401(a)(9)-(1), Q&A C-3(a) provides that § 401(a)(9)(B)(iii) applies if, as of the employee's date of date, any individual is designated as a beneficiary other than, or in addition to, the employee's surviving spouse.

With regard to ruling request 1, section 1.401(a)(9)-1, Q&A D-2A(a) of the Proposed Regs. provides that only individuals may be designated beneficiaries for purposes of § 401(a)(9). However, in cases where a trust is named as the plan beneficiary, § 1.401(a)(9)-1, Q&A D-5(a) provides that the beneficiaries of that trust may be treated as designated beneficiaries under a

plan or IRA, provided the following four requirements ("Trust Qualification Requirements") are met:

(1) The trust is a valid trust under state law, or would be but for the fact there is no corpus;

(2) The trust is irrevocable or will, by its terms, become 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; and

(4) A copy of the trust document is provided to the plan.

Section 1.401(a)(9)-1(b), Q&A D-6(a) of the Proposed Regs. provides, in pertinent part, that if a trust is named as a 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 under § 401(a)(9)(B)(iii), if the four Trust Qualification Requirements cited above are satisfied as of the date of the employee's death.

Section 1.401(a)(9)-1(b), Q&A E-5(a) provides that if more than one individual is designated as a beneficiary with respect to an employee as of his date of death (in the case where the employee dies prior to his required beginning date), 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, Q&A E-5(e)(1) of the Proposed Regs. states that, if a beneficiary's entitlement to an employee's benefit is contingent on the death of a prior beneficiary, such contingent beneficiary will not be considered a beneficiary for purposes of determining who is the designated beneficiary with the shortest life expectancy under paragraph (a) or whether a beneficiary who is not an individual is a beneficiary. This rule does not apply if the death occurs prior to the applicable date for determining the designated beneficiary. Q&A E-5(e)(3) provides an example illustrating that a death contingency is a provision in which the availability of benefits is dependent on another beneficiary's death.

In this case, you have represented that Trust D, of which the Marital Trust is a part, is a valid trust under the laws of State E that became irrevocable at the time of the Decedent's

death by the terms of the Trust Agreement. You have further represented that, in accordance with statutory requirements of State E, all other expenses and charges against Trust D were fully funded with trust assets other than the Decedent's IRA. The Marital Trust (residuary trust estate) is, therefore, the sole named beneficiary of the Decedent's IRA. The Decedent's Surviving Spouse is the sole income beneficiary of the Marital Trust and the only discretionary beneficiary of principal. After the death of the Surviving Spouse, any assets remaining in the Marital Trust will be divided equally between contingent Beneficiaries B and C, or their then living descendants *per stirpes*. Your authorized representative has asserted that the Surviving Spouse is older than either Beneficiary B or Beneficiary C. Finally, the Trustee/IRA custodian has received copies of the Trust as required under § 1.401(a)(9)-1, Q&A D-5(a), Item 4.

It is concluded, therefore, that under the rules of § 1.401(a)(9)-1, Q&A D-5(a) of the Proposed Regs., the Surviving Spouse is treated as the "designated beneficiary" of the Decedent's IRA for purposes of determining the designated beneficiary with the shortest life expectancy, determined at the time of the Decedent's death. Accordingly, with respect to ruling request one, it is ruled that the Decedent's Surviving Spouse is considered to be the designated beneficiary for purposes of determining the time period over which required distributions will be made from the Decedent's IRA to the Marital Trust pursuant to § 401(a)(9) of the Code.

With regard to ruling request number two, § 1.401(a)(9)-1, Q&A D-5(b) of the Proposed Regs. provides, in pertinent part, that only an individual may be a designated beneficiary for a qualified plan or IRA. However, because the Trust Qualification Requirements of the Proposed Regulations have been satisfied, for purposes of section 401(a)(9), distributions made to a trust will be treated as paid directly to the beneficiaries of the trust with respect to the trust's interest in the employee's benefit.

In this case, annuity distributions have commenced from the Decedent's qualified IRA to an irrevocable trust (the Marital Trust) established and maintained primarily for the benefit of the Decedent's Surviving Spouse. The annuity starting date occurred on or before December 31, 1998, the last day of the calendar year immediately following the calendar year in which the Decedent died. Under the rule of § 1.401(a)(9)-1, Q&A D-5(b) of the Proposed Regs., distributions made from the IRA to the Marital Trust are considered as being paid directly to the

designated beneficiary (i.e., the Surviving Spouse) for purposes of the § 401(a)(9) rules.

Accordingly, as to ruling request two, it is ruled that beginning no later than December 31, 1998, distributions made to the Marital Trust over the life of the Surviving Spouse, or over a period not extending beyond the life expectancy of the Surviving Spouse, are in accordance with § 401(a)(9)(B)(iii) of the Code, as interpreted by § 1.401(a)(9)-1, Q&A C-3(a) of the Proposed Regulations.

It is assumed that the IRA (represented herein to be a qualified IRA) in which the Decedent's IRA assets are deposited contains the necessary provisions for making timely distributions of IRA assets into the Marital Trust as described in this ruling request and required under § 401(a)(9) of the Code. However, this ruling makes no determination as to the qualified status of the Decedent's IRA. Further, you have represented, and it is assumed that the Marital Trust is a qualified terminable interest property (QTIP) trust under section 2056(b)(7) of the Code. You did not request a ruling from the Service as to the validity of the Marital Trust as a QTIP trust, and no such ruling has been given.

A copy of this letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office. Should you have questions pertaining to your ruling, your contact in the National Office of the Service is **********, Employee Plans Technical Branch 1 (OP:E:EP:T:1), at **********.

Sincerely,

Edward B. Wessel

for John Swieca
Chief, Employee Plans
Technical Branch 1

Enclosures:

- Deleted copy of this private letter ruling.
- Notice 437--"Notice of Intention to Disclose"
- Copy of Cover Letter to Authorized Representative