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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Contact Person:

Telephone Number:

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Date: MAY 11 1999

Legend:

Individual A: =

Individual B: =

Individual C: =

IRA #1: =

IRA #2: =

IRA #3: =

IRA #4: =

This is in response to your August 28, 1998, request for a private letter ruling concerning the tax treatment of certain transactions relating to Individual A and Individual B's individual retirement arrangements (IRAs). The following facts and representations have been submitted in support of your ruling request.

Individual A established two IRAs, IRA #1 and IRA #4. Pursuant to beneficiary designations timely signed, Individual B, the lawful spouse of Individual A, was the sole beneficiary of both IRA #1 and #4. Prior to Individual A's death, Individual B established IRA #2. It is represented that the IRAs established by Individual A and Individual B were, at all times, in compliance with section 408(a) of the Internal Revenue Code.

Individual A reached age 70 ½ in 1996, and received distributions during the year from IRA #1 in compliance with the minimum required distribution provisions of Code sections 408(a)(6) and 401(a)(9) in 1996, taking into account both IRA #1 and IRA #4. As the owner of IRA #2, and also being over the age of 70 ½, Individual B began receiving the required minimum distributions with respect to IRA #2 in 1995.

Individual A died in 1997. As sole beneficiary, Individual B received the required minimum distributions from IRA #1 for 1997. Subsequently, Individual B, by means of a trustee to trustee transfer, transferred the assets of IRA #1 to her own account, IRA #2. Also during 1997, Individual B elected to treat IRA #4 as her own and, in so doing, designated Individual C as the beneficiary. In early 1998, Individual B removed the assets of IRA #1 from IRA #2 and transferred them to a new IRA, IRA #3, and named her daughter, Individual C, as beneficiary of

IRA #3. Individual B began receiving the required minimum distributions from IRA #4 in 1998, taking into account IRAs #2, #3, and #4.

Based on the foregoing, you request the following rulings:

1. That Individual B may elect to treat IRA #4 as her own, notwithstanding the fact that, at the death of her husband, both Individual A and Individual B had passed the required beginning dates under Code section 408(a)(6).

2. That Individual B's daughter, Individual C, may be treated as the designated beneficiary of IRA #4 for purposes of Code section 408(a)(6) since she was designated on or before December 31, 1998.

3. That no excise tax under Code section 4974 will be imposed for calendar years after 1997, so long as amounts actually distributed from IRA #4 are equal to or greater than the amounts required to be distributed under Code section 408(a)(6).

4. That no excise tax under Code section 4974 will be imposed for failure to make distributions from IRA #4 for any calendar year prior to 1998.

5. That Individual B may elect to treat IRA #1 as her own, notwithstanding the fact that, at the death of her husband, both Individual A and Individual B had passed the required beginning dates under Code section 408(a)(6).

6. That Individual B's daughter, Individual C, may be treated as the designated beneficiary of IRA #3 for purposes of Code section 408(a)(6) since she was designated on or before December 31, 1998.

7. That no excise tax under Code section 4974 will be imposed for calendar years after 1997, so long as amounts actually distributed from IRA #3 are equal to or greater than the amounts required to be distributed under Code section 408(a)(6).

8. That no excise tax under Code section 4974 will be imposed for failure to make distributions from IRA #3 for any calendar year prior to 1998.

With respect to your ruling request, section 408(a) of the 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 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 trust is maintained.

Section 408(d)(3) of the Code sets forth the requirements for a tax-free rollover of amounts distributed from an IRA. Section 408(d)(3)(B) limits such rollovers for an individual to no more than once a year.

Sections 401(a)(9)(A)(i) and (ii) and 401(a)(9)(C) of the Code provide that the entire interest of each employee under a plan to which the required minimum distribution rules apply must be distributed no later than April 1 of the calendar year following the calendar year in

which the individual attains age 70 ½ (the required beginning date) or, in general, must be distributed beginning not later than the required beginning date in accordance with regulations over the life of the employee or over the lives of the 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)(B) of the Code provides, in part, that if distributions have begun and the employee dies before the entire interest has been distributed to him, then the remaining portion of such interest shall be distributed at least as rapidly as under the method of distribution being used as of the date of his death.

Section 1.408-8, Q&A A-4(b) of the Proposed Income Tax Regulations states, in relevant part, that in the case of an individual dying after December 31, 1983, the individual's surviving spouse may elect to treat the spouse's entire interest in the trust as the spouse's own account. If the surviving spouse makes such an election, the surviving spouse's interest in the account would then be subject to the distribution requirements of section 401(a)(9)(A) of the Code rather than those of section 401(a)(9)(B). An election to claim the IRA as the surviving spouse's own will be considered to have been made by the surviving spouse if any required amounts in the account (including any amounts that have been transferred into an IRA for the benefit of such surviving spouse) have not been distributed within the appropriate time period applicable to the decedent under section 401(a)(9)(B). The result of such an election is that the surviving spouse shall then be considered the individual for whose benefit the trust is maintained.

There is no requirement that the surviving spouse not have reached the required beginning date in order for such individual to claim an IRA as his or her own. Accordingly, with respect to ruling requests one and five, we conclude that, for purposes of Code section 408(a)(6), Individual B may lawfully claim IRAs #1 and #4 as her own, notwithstanding the fact that at the death of Individual A, both Individual A and Individual B had passed the required beginning date.

With respect to requests two and six, section 1.401(a)(9)-1(b), Q&A D-3(a) of the Proposed Income Tax Regulations states, in part, that, generally, for purposes of calculating the distribution period described in section 401(a)(9)(A)(ii) of the Code (for distributions before death), the designated beneficiary will be determined as of the employee's required beginning date.

Section 1.401(a)(9)-1, Q&As F-1(b) and (c) of the Proposed Income Tax Regulations state, in part, that the distribution required to be made on or before the employee's required beginning date shall be treated as the distribution required for the employee's first distribution calendar year. A calendar year for which a minimum distribution is required is a distribution calendar year. The first calendar year for which a distribution is required is an employee's first distribution calendar year. The distribution required for distribution calendar years (other than a distribution required to be made on or before the employee's required beginning date) must be made on or before December 31 of that distribution calendar year.

Section 1.408-8, Q&A A-7 of the proposed regulations provides, in part, that in the case of a transfer from one IRA to another IRA, the rules of section 1.401(a)(9)-1, Q&A G-4 of the proposed regulations apply for purposes of determining the account balance of, and the minimum distribution, from the IRAs involved.

Section 1.401(a)(9)-1, Q&A G-4 provides, in part, that in the case of a transfer of an amount of an employee's benefit from one plan to another, the general rule is that the benefit of the employee under the transferee plan is increased by the amount transferred. The transfer has no impact on the minimum distribution required to be made by the transferee plan in the calendar year in which the transfer is received. However, if a minimum distribution is required from the transferee plan for the following calendar year, the transferred amount must be considered to be part of the employee's benefit under the transferee plan.

The entire balance credited to Individual A's IRA #1 was transferred in 1997 to Individual B's IRA, IRA #2, and subsequently to IRA #3 in early 1998. At the same time, an election was made by Individual B to treat IRA #4 as her own account . Accordingly, for purposes of section 408(a)(6) of the Code and the income tax regulations thereunder, Individual B's required beginning date for IRAs #3 and #4 will be December 31, 1998.

While the proposed regulations do not specifically answer ruling requests two and six, in the absence of final regulations, issues may be resolved by a reasonable interpretation of the proposed regulations and statutory provisions. Accordingly, it is a reasonable interpretation of the minimum distribution requirements, with respect to ruling requests two and six, that Individual B's daughter, Individual C, may be treated as designated beneficiary of IRA #3 and #4 for purposes of section 408(a)(6) of the Code, since she will have been designated before Individual B's first required distribution date of December 31, 1998.

Section 4974 states, in part, that if the amount distributed during the taxable year of the payee under any qualified retirement plan, including an IRA as defined in Code section 408, is less than the minimum required distribution for such taxable year, there is hereby imposed a tax equal to 50 percent of the amount by which such minimum distribution exceeds the actual amount distributed during the taxable year.

Regarding ruling request three and seven, because Invididual B has assumed Individual A's IRAs as Individual B's own, and Individual B is considered the individual for whose benefit the IRAs are maintained, Individual B's required minimum distribution will be determined by the distribution provisions of section 401(a)(9)(A) of the Code, over Individual B's life or over the lives of Individual B and a designated beneficiary (or over a period not extending beyond the life expectancy of Individual B or the life expectancy of Individual B and a designated beneficiary). We therefore conclude, with respect to ruling requests three and seven, that no excise tax under section 4974 will be imposed for calendar years after 1997, so long as amounts actually distributed from IRA's #3 and #4 are greater than or equal to the minimum amounts required to be distributed to Individual B under section 408(a)(6). We further conclude, with respect to ruling requests four and eight, that no excise tax under section 4974 will be imposed for failure to make distributions from IRAs #3 and #4 for any calendar year prior to 1998.

This ruling is based on the assumption that all IRAs meet the requirements of section 408 of the Code at all times.

The original letter and a copy of this letter have been sent to your authorized representative in accordance with a power of attorney on file in this office.

Sincerely yours, John G. Riddle, Jr., Chief, Employee Plans, Technical Branch 4

John G. Riddle, Jr.

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