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Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply to:
OP:3:EP:T:3

Date:
AUG 30 1999

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Taxpayer D:

Bank E:

Taxpayer F:

Taxpayer G:

Taxpayer H:

Taxpayer I:

Taxpayer J:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

State W:

IRA X:

Trust Y:

Subtrust Z:

Ladies and Gentlemen:

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

Taxpayer A, whose date of birth was Date 1, died testate on Date 5 prior to attaining his required beginning date at that term is defined in section 401(a)(9) of the Code. Taxpayer A was survived by his wife, Taxpayer B, and his two children, Taxpayers C and D.

At the time of his death, Taxpayer A owned IRA X. Bank E is the trustee of IRA X. Section 7.7(b)(2) of IRA X provides that, if the Grantor dies prior to reaching his Code section 401(a)(9) required beginning date, then the IRA trustee, at the Beneficiary's direction, shall distribute the balance of the Grantor's interest to the Beneficiary over the life expectancy of the Beneficiary commencing no later than December 31 of the calendar year following the calendar year in which the Grantor dies.

On Date 2, Taxpayer A executed Trust Y. On Date 4, Taxpayer A amended and restated Trust Y. Bank E is a co-trustee of Trust Y. Paragraph 1.2 of Trust Y provides that Trust Y becomes irrevocable at the death of Taxpayer A. Bank E has received a copy of Trust Y.

On Date 3, Taxpayer A named Trust Y as the primary beneficiary of his IRA X.

Paragraphs 4A.1, 4A.2 and 4A.3 of Trust Y provide for specific bequests to several individuals, Taxpayers B, C, D, H, I, and J. Taxpayers H, I, and J have disclaimed said bequests. Each of these bequests, to the extent not disclaimed by beneficiaries thereof, has been funded with assets other than IRA X.

Article 6 of Trust Y sets up Subtrust Z. Paragraph 6.2(a)(i) of Trust Y provides that $100,000 is to be held in trust for the lifetime support of Taxpayer F, Taxpayer A's

mother. The balance of this "support trust" was to be distributed to Taxpayer G, Taxpayer A's brother, at the death of Taxpayer F.

On Date 6, which date was within nine (9) months of Date 5, Taxpayers F and G disclaimed their interests in the proceeds of IRA X. Thus, the "support trust" referenced immediately above was funded with assets other than the assets of IRA X.

Paragraph 6.2(a)(ii) of Trust Y provides that the remainder of the trust estate is to be apportioned equally between Taxpayers C and D, Taxpayer A's children. 25% of each beneficiary's equal share is to be distributed outright and free of trust to said beneficiary, and 75% is to be held in trust, in equal shares, for the life of each respective beneficiary. The income generated by the amounts held in trust may be distributed to Taxpayers C and D as necessary or advisable to provide for their proper support, maintenance or education. Additionally, trust principal may be distributed to provide for the support, maintenance or education of Taxpayers C and D or their children, or to meet emergency or other nonrecurring needs of Taxpayers C and D or their children, or to permit either Taxpayer C or Taxpayer D to enter a profession or to take advantage of a business opportunity. Several children of Taxpayers C and D were alive at Date 5.

Paragraph 6.3(e) of Trust Y provides, in pertinent part, that upon the death of a descendant of Taxpayer A's for whom a share of the trust estate is being held in trust under paragraph (Article) 6, which share consists of an interest in retirement benefits (including IRAs), said descendant shall have the right to dispose of his/her interest by will or codicil provided that the descendant may only dispose of his/her interest in favor of one or more of the descendant's own descendants.

Paragraph 6.3(b) of Trust Y provides, in short, that the remaining income and either one-half or all of the existing principal of Trust Y is to be distributed to a beneficiary of Trust Y, excluding Taxpayers C and D, when said beneficiary reaches certain age(s).

Paragraph 4.4 of Trust Y provides that no gift or bequest under Article 4A, Paragraph 6.2(a)(i), or any other provision of this trust to persons other than children of the trustor, their descendants and trusts for their benefit may be funded by distributions of "Retirement Benefits" as defined in Paragraph 5.1, and distributions of Retirement

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Benefits shall be used to fund only gifts and bequests to trustor's children, their descendants and trusts for their benefits (sic) under Paragraph 6.2(a)(ii).

On December 31, 1997, distributions from IRA X began to be made to Taxpayers C and D, the beneficiaries of Trust Y, over the life expectancy of Taxpayer C, the older of the two. Distributions for 1997 were based on the IRA X account balance as of December 31, 1996.

Taxpayers C and D, Taxpayer A's children and the beneficiaries of Trust Y who are entitled to receive IRA X distributions, intend to divide their IRA X interest into two separate IRA sub-accounts, one holding Taxpayer C's interest, and the other holding Taxpayer D's interest.

Based on the above information, you, through your authorized representative, request the following letter rulings;

(1) Trust Y satisfies the requirements of Question and Answer D-5(a) of section 1.401(a)(9)-1 of the Proposed Income Tax Regulations so that Taxpayer A's two children, Taxpayers C and D, beneficiaries of Trust Y with respect to Trust Y's interest in IRA X, may be considered designated beneficiaries of IRA X for purposes of determining the distribution period under section 401(a)(9)(B)(iii) of the Code;

(2) the payout period elected with respect to distributions from IRA X is effective with respect to distributions from IRA X pursuant to Q&A C-4(c) of the proposed regulations;

(3) Taxpayer A's children, Taxpayers C and D, and their descendants living at the time of Taxpayer A's death, are the beneficiaries of Trust Y's interest in IRA X and are the sole individuals who life expectancies need to be considered for purposes of determining who is the Code section 401(a)(9) designated beneficiary of IRA X;

(4) an effective election has been made for distribution of the IRA X benefits over a period measured by the life expectancy of Taxpayer C, the shortest of the life expectancies of Taxpayers C and D and their descendants;

(5) two sub-accounts, one holding the IRA X benefit

payable to Taxpayer C and the other holding the IRA X benefit payable to Taxpayer D, may be set up after both the year of Taxpayer A's death and the following year have passed, without such setting up resulting in immediate distributions to either Bank E or Taxpayer(s) C and D; and

(6) for purposes of satisfying the minimum required distribution rules of Code section 401(a)(9), made applicable to IRAs pursuant to Code section 408(a)(6), distributions from the two sub-accounts containing the IRA X benefits payable to Taxpayers C and D, and their descendants, may be distributed based on the life expectancy of Taxpayer C, the eldest beneficiary, which life expectancy may be determined under the Tables found at section 1.72-9 of the Income Tax Regulations.

With respect to your ruling requests, section 401(a)(9)(A) 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-

(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 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).

Section 401(a)(9)(C) of the Code provides 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 attains age 70 1/2.

Section 401(a)(9)(B)(ii) of the Code provides that a trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), the entire interest of the employee will be distributed within 5 years after the death of such employee.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A C-2, provides that, in order to satisfy the five-year rule

in section 401(a)(9)(B)(ii), the employee's entire interest must be distributed as of 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 above referenced 5-year rule. Under the exception, any portion of an employee's interest payable to a designated beneficiary which is to be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary) may be so distributed beginning not later than 1 year after the date of the employee's death or such later date as the Secretary may by regulations prescribe.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A D-4, provides, in relevant part, that for purposes of calculating the distribution period described in section 401(a)(9)(B)(iii) or (iv), the designated beneficiary will be determined as of the employee's date of death. If, as of the date of the employee's death, there is no designated beneficiary under the plan with respect to that employee, distribution must be made in accordance with the five-year rule in section 401(a)(9)(B)(ii).

Section 1.401(a)(9)-1 of the proposed regulations, Q&A C-3(a) provides that, in order to satisfy the exception to the five-year rule for nonspouse beneficiaries, distributions must commence on or before December 31 of the calendar year immediately following the calendar year in which the employee died. This rule also applies to the distribution of the entire remaining benefit if, as of the employee's date of death, an individual is designated as a beneficiary in addition to the employee's surviving spouse.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A C-4(c) provides that a plan may adopt a provision that permits employees (or beneficiaries) to elect on an individual basis whether the five-year rule in section 401(a)(9)(B)(ii) of the Code or the exception to the five-year rule in section 401(a)(9)(B)(iii) applies to distributions.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A D-2A, 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 D-5 of section 1.401(a)(9)-1 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 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, provides 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 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.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A E-5(a)(1), provides, in pertinent part, 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. The date for determining the designated beneficiary (under D-3 or D-4, whichever is applicable) is the applicable date.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A E-5(e)(1), provides 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).

Section 1.72-9 of the Income Tax Regulations provides Tables used for determining life expectancies. Section 1.401(a)(9)-1 of the proposed regulations, Qs&As E-4 and E-5, provides that Tables V and VI of section 1.72-9 must be used to compute life expectancies for purposes of determining Code section 401(a)(9) minimum required distributions.

In this case, with respect to your first four ruling requests, Taxpayer A died having ownership of IRA X and prior to attaining his Code section 401(a)(9) required beginning date. Trust Y, which became irrevocable at the death of Taxpayer A, is the named beneficiary of IRA X. Taxpayers C and D, Taxpayer A's children, and their children, are the Trust Y beneficiaries who are entitled to receive amounts distributed from IRA X. Taxpayer C is the eldest beneficiary entitled to receive IRA X distributions. Pursuant to the provisions of IRA X, an election was made to receive distributions from IRA X in accordance with the exception to the five-year rule, found at Code section 401(a)(9)(B)(iii) over the life expectancy of Taxpayer C. Pursuant to section 1.401(a)(9)-1 of the proposed regulations, Q&A C-3(a), distributions from IRA X commenced no later than December 31 of the calendar year following the calendar year of Taxpayer A's death.

Thus, with respect to ruling requests (1) through (4), the Service concludes as follows:

(1) Trust Y satisfies the requirements of Question and Answer D-5(a) of section 1.401(a)(9)-1 of the Proposed Income Tax Regulations so that Taxpayer A's two children, Taxpayers C and D, beneficiaries of Trust Y with respect to Trust Y's interest in IRA X, may be considered designated beneficiaries of IRA X for purposes of determining the distribution period under section 401(a)(9)(B)(iii) of the Code;

(2) the payout period elected with respect to distributions from IRA X is effective with respect to distributions from IRA X pursuant to

Q&A C-4(c) of the proposed regulations;

(3) Taxpayer A's children, Taxpayers C and D, and their descendants living at the time of Taxpayer A's death, are the beneficiaries of Trust Y's interest in IRA X and are the sole individuals who life expectancies need to be considered for purposes of determining who is the Code section 401(a)(9) designated beneficiary of IRA X;

(4) an effective election has been made for distribution of the IRA X benefits over a period measured by the life expectancy of Taxpayer C, the shortest of the life expectancies of Taxpayers C and D and their descendants.

With respect to your fifth ruling request, 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 constitute a payment or distribution to the participant and is not treated as a distribution and rollover contribution. The revenue ruling indicates that this conclusion would apply whether a bank trustee initiates, or the IRA participant directs, the transfer of the funds.

In this case, the IRA X interest remaining will be divided into two IRA sub-accounts, one holding Taxpayer C's interest, and the other holding Taxpayer D's interest. Such division will be accomplished by means of one or more trustee-to-trustee transfers.

Based on the above, with respect to your fifth ruling request, we conclude as follows:

(5) Two sub-accounts, one holding the IRA X benefit payable to Taxpayer C and the other holding the IRA X benefit payable to Taxpayer D, may be set up after both the year of Taxpayer A's death and the following year have passed, without such setting up resulting in immediate distributions to either Bank E or Taxpayer(s) C and D.

With respect to your sixth ruling request, as noted previously, Taxpayer C is the eldest beneficiary entitled to receive distributions from IRA X. Furthermore, as noted above, distributions from IRA X began over Taxpayer C's life expectancy no later than December 31 of the calendar year following the calendar year of Taxpayer A's death.

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Thus, with respect to your sixth ruling request, we conclude as follows:

(6) For purposes of satisfying the minimum required distribution rules of Code section 401(a)(9), made applicable to IRAs pursuant to Code section 408(a)(6), distributions from the two sub-accounts containing the IRA X benefits payable to Taxpayers C and D, and their descendants, may be distributed based on the life expectancy of Taxpayer C, the eldest beneficiary, which life expectancy may be determined under the Tables found at section 1.72-9 of the Income Tax Regulations.

This ruling assumes that IRA X either has met or will meet the requirements of Code section 408(a) at all times relevant thereto. It also assumes that all of the disclaimers referenced herein are valid under the laws of State W. Finally, it assumes that the disclaimers referenced herein met the requirements of Code section 2518(b).

This ruling is directed solely to the taxpayer who requested it. Code section 6110(k)(3) provides that it may not be used or cited by others as precedent.

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

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Chief, Employee Plans
Technical Branch 3

Enclosures:

Deleted copy of ruling letter
Form 437