Internal Revenue Service

Department of the Treasury

Washington, DC 20224

UIL: 401.00-00

Contact Person:

Telephone Number:

In Reference to:

Date: T:EP:RA:T1

DEC 22 1999

Legend:

. Individual A =

Individual B =

Plan X =

1989 Trust =

Fund 1 =

Fund 2 =

Dear

This is in response to a request for a letter ruling submitted by your authorized representative on May 26, 1999, as supplemented by additional correspondence on August 3, October 20 and December 8, 1999, concerning the minimum distribution requirements under section 401(a)(9) of the Internal Revenue Code (the "Code").

Your representative submitted the following facts and representations in support of your request:

Individual A reached his required beginning date, as that term is defined in section 401(a)(9), on April 1, 1990, and he died on July 11, 1998. Distributions from Plan X to Individual A prior to his death were based on his single, recalculated life expectancy. Individual A executed a trust instrument on September 14, 1989 (the "1989 Trust"), and on October 30, 1989, Individual A designated the 1989 Trust as the beneficiary of his account under Plan X. You represent that the 1989 Trust is valid under state law. Individual B, Individual A's daughter, was named trustee of the 1989 Trust.

Your authorized representative asserts that, pursuant to its terms. the 1989 Trust became irrevocable at the death of Individual A. Article IV of the 1989 Trust provided tbat the trust property be divided into two trust estates, Fund 1 and Fund 2, at the death of Individual A. Article V provided that upon Individual A's death, Individual B was entitled to the income and principal of Fund 1 subject to a standard. Article V further provided that the remainder of assets under Fund 1 be paid and distributed to each child of Individual B then living or to the lineal descendants of each child. The 1989 Trust also entitled Individual B to the income and principal, subject to a standard, of Fund 2. Under the terms of the 1989 Trust, Individual B could appoint the remainder of any property in Fund 2, but the appointment was limited to her lineal descendants. Your authorized representative asserts that the Plan X administrator was provided a copy of the trust instrument at the time minimum distributions commenced. Individual B is older than any of her lineal descendants referenced above as potential remaindermen of 1989 Trust property.

Based on the above facts and representations, you request a ruling that for purposes of determining the required minimum distributions incident to the death of Individual A, Individual B is treated as the designated beneficiary of Individual A's account under Plan X and, therefore, required minimum distributions from Plan X may be made over Individual B's single life expectancy as the beneficiary with the shortest life expectancy of all potential beneficiaries existing at the time of Individual A's required beginning date.

Section 401(a)(9)(A)(ii) 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 will be distributed to such employee 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 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 later of the calendar year in which the employee retires or attains age 70 and 1/2.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A D-3, provides the general rule that for purposes of determining 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 of the proposed regulations, Q&A D-5(a), provides that pursuant to D-2A of this section only an individual may be a designated beneficiary for purposes of determining the distribution period under section 401(a)(9)(A)(ii). Consequently, a trust may not be the designated beneficiary even though the trust is named as beneficiary. However, if the requirements of paragraph (b) of this D-5 are met, distributions made to the trust will be treated as having been paid to the beneficiaries of the trust with respect to the employee's interest under the plan for purposes of determining the distribution period under section 401 (a)(9)(A)(ii). If, as of any date on or after the employee's required beginning date, a trust is named as a beneficiary of the employee and the requirements of paragraph (b) of this D-5 are not met, the employee will be treated as not having a designatedbeneficiary under the plan for purposes of section 401(a)(9)(A)(ii). Consequently, for calendar years beginning after that date, distributions must be made over the employee's life (or, over the period which would have been the employee's remaining life expectancy determined as if no beneficiary had been designated as of the employee's required beginning date.)

The requirements of paragraph D-5(b) are met if, as of the later of the date on which the trust is named as a beneficiary of the employee, or the employee's required beginning date, and as of all subsequent periods during which the trust is named as a beneficiary, the following requirements are met:

(1) The trust is a valid trust under state law, or would be but for the fact that 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 within the meaning of D-2 of this section.
(4) The documentation described in D-7 of this section has ken provided to the plan administrator.

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

Section 401(a)(9)(B)(i) of the Code provides that where distributions of an employee's interest have begun in accordance with subparagraph (A)(ii) (concerning required distributions), and the employee dies before his interest has ken distributed to him, the remaining portion of such interest will be distributed at least as rapidly as under the method of distribution being listed under subparagraph (A)(ii) as of the date of his death.

In this case, Individual A participated in Plan X, a qualified retirement plan. Individual A began takiig minimum distributions in 1990 and died in 1998. The beneficiary of his interest in Plan X was the 1989 Trust, a trust in effect at Individual A's required beginning date. The 1989 Trust provided that Individual B is the income and principal beneficiary (subject to a standard) of Fund 1 and Fund 2. The 1989 Trust satisfies the requirements of section 1.401 (a)(9)- 1 of the proposed regulations, Q&A D-5. The facts indicate that only the children of Individual B or if deceased, the children of Individual B's children, are entitled to the remainder of the Trust assets. Individual B is the oldest beneficiary of all potential beneficiaries of Individual A's interest in Plan X. Accordingly, we conclude that Individual B is treated as the designated beneficiary of Individual A's account under Plan X and, therefore, that minimum required distributions may be made to Individual B over her single Iife expectancy measured from Individual A's required beginning date.

The above ruling is based on assumption that Plan X is qualified at all times relevant to the transaction.

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

A copy of this ruling is being sent to your authorized representative in accordance with a power of attorney on file in this office.

Sincerely yours,

(Signed) John Swieca

John Swieca, Manager
Employee Plans Technical Group 1
Tax Exempt and Government Entities Division

Enclosures:
Deleted copy of this letter
Notice of Intention to Disclose

cc: