408.06-00
401.06-02
Internal Revenue Service

Department of the Treasury
Washington. DC 20224

200013041

contact Person:

Telephone Number:

In Reference to:
T:EP:RA:T5

Date:

JAN -4 2000

Lesend:

Individual A	=
Individual B	=
Individual C	=
Individual D	=
Agreement E	=
Trust F	=
Trust G	=
Trust H	=
IRA K	=
IRAL	=
State M	=
State N	=
Corporation P	=
Corporation Q	=

This is in response to your request for a ruling dated September 29, 1998, submitted by your authorized representative, and a telephone conference held on December 17, 1999, in which you request a number of letter rulings under sections 401(a)(9), 408, 408A, and 2518(b) of the Internal Revenue Code. The following facts and representations have been submitted in support of your request.

Individuals A and B were involved in an automobile accident in State N on ***************. Individual B died that same day, ***************. Individual A died several days later on ******* *******. At the time of their deaths, Individuals A and B were residents of State M. Although Individuals A and B were subject to State M's version of community property law known as marital property, they had executed Agreement E on ***************, which in part stated that any interest in any deferred employment benefits, Individual Retirement Accounts (IRAs), and annuities shall only be owned by the titled spouse.

At the time of his death, Individual A owned IRA K, with Corporation P as IRA custodian. This account had a date of death

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value of approximately *********. Individual A's date of birth was ***********. At the time of his death Individual A was ** years of age and had therefore not reached the required beginning date for distributions from IRAs and qualified plans. At the time of her death, Individual B was the owner of IRA L, with Corporation Q as IRA custodian. This account had a date of death value of approximately ********. Individual B's date of birth was **************** . At the time of her death, Individual B was ** years of age and she had therefore not reached the required beginning date for distributions from IRAs and qualified plans.

The beneficiary designation for IRA K names Individual B as the primary beneficiary, and further names Trust F as the contingent beneficiary. The beneficiary designation for IRA L names Individual A as the primary beneficiary and Trust F as the contingent beneficiary.

On ***************, Individuals A and B signed Trust F. Under Trust F, Individuals A and B are the initial trustees. Upon the death of either Individual A or B, Trust F provides that two trusts are to be created, Trust G and Trust H. The surviving spouse is to serve as the sole trustee of the trusts.

Trust F states in Article III(B)(1)(c) that Trust H or Trust G shall be funded with a fractional share sufficient to eliminate or minimize the federal estate tax. The specific wording of that provision is as follows:

> c. The smallest fractional share of the remaining trust estate that, if added to the total value for federal estate tax purposes of all other interests in property that pass or have passed from the deceased spouse to or in trust for the surviving spouse, and if includible in the deceased spouse's gross estate for federal estate tax purposes and qualified for the marital deduction, will entirely eliminate (or reduce to the maximum possible extent) any federal estate tax at the death of the deceased spouse after taking into account:
>
> > 1. All available deductions taken in determining the federal estate tax payable by reason of the death of the deceased spouse.
> >
> > 2. The net value of all other property, whether it is given under this instrument and whether it passes or has passed to or in trust for the surviving spouse so that it is included in the deceased spouse's gross estate and qualifies for the federal estate tax marital deduction.
> >
> > 3. All credits allowed for federal estate tax purposes, provided that the federal credit for

> state death taxes shall only be considered to the extent that its use does not cause the payment of any state estate tax (it being our intention, however, that the state death tax credit available to the deceased spouse's estate for the payment of any state inheritance tax be fully taken into account in determining the size of the survivor's trust even if use of the credit causes an increase in the amount of inheritance tax payable); and provided no credit shall be taken into account in determining the size of the survivor's trust if the credit shall result in the disallowance of the marital deduction.

Upon the death of either Individual A or Individual B, Trust G became irrevocable pursuant to the provisions of Article VII(C) of Trust F which states as follows:

> On the deceased spouse's death, the surviving spouse may amend, revoke, or terminate the survivor's trust. [Trust G] may not be amended, revoked, or terminated except as provided in Paragraph V(H). On the surviving spouse's death, none of the trusts may be amended, revoked, or terminated except as provided in paragraph V(H). On revocation or termination of the survivor's trust, the Trustee shall promptly deliver to the surviving spouse all or the designated portion of the survivor's trust assets.

Trust F further provides in Article IV(C) (2) as follows:

> Upon the surviving spouse's death, if and to the extent that the surviving spouse shall not have effectively disposed of all property of the survivor's trust through a valid and effective exercise of a power of appointment, all of the remaining assets of the survivor's trust shall be distributed to the Trustee of [Trust F] to be added to the [Trust F] assets and to be thereafter held, administered, and distributed as part of the [Trust F]

Neither Individual A nor Individual B executed a power of appointment.

Trust F provided in Article V(C) that "after the surviving spouse's death, when there is no living child of ours under the age of 22, the Trustee shall divide [Trust G] into equal shares so that there will be one share for each of our children who is then living and one share for each of our children who has been deceased and is survived by then living issue."

Trust F provides in Article V (A) (1) that "the net income shall be distributed to any one or more of a group consisting of the surviving spouse and our issue." This same section goes on to state that distributions of principal may be made to the same group for "maintenance, education, support and health." These words are specifically included in the list of "ascertainable standards" provisions in section 25.2514-1(c)(2) of the Income Tax Regulations, therefore distribution of principal from Trust F is governed by ascertainable standards, whereas distribution of income from the Trust F is not.

Trust F further provided in Article V(D)(2) that the "principal shall be distributed to the child as follows: one half to the child when he or she has reached the age of **, and the balance when he or she has reached the age of **." At the time of their deaths Individuals A and B had two children, both of whom were living and over the age of **.

Trust F and Trust G are valid trusts under the laws of State M.

On ***************, as permitted by State M law, the personal representatives of Individual A's estate executed two disclaimers on his behalf. The first disclaimer disclaims any and all interest that Individual A or his estate may have now or in the future in and to IRA L, a brokerage account registered in Individual B's name at Corporation P through Corporation Q with a fair market value of approximately ********* on ***************, and any subsequent investment return attributable thereto.

This disclaimer was delivered to the appropriate party on *****************. The second disclaimer disclaims (1) any rights Individual A may have had in any fiduciary or other capacity, including, but not limited to, the right to direct distribution of income, as the appointed trustee of Trust G created under Trust F to receive or direct the payment or distribution of any income from said Trust G, and (2) Individual A's appointment as Trustee of Trust G under Trust F.

The second disclaimer was delivered to the appropriate party on ***************. State M law provides that a person's right to disclaim property survives the person's death and may be exercised by that person's personal representative or special administrator upon receiving approval from the court having jurisdiction over the person's estate after hearing upon notice to all persons interested in the disclaimed property. Both disclaimers have been approved by the court having jurisdiction over Individual A's estate.

The personal representatives of Individual A's estate have disclaimed any interest which Individual A or his estate may be entitled to receive from IRA L. This disclaimer has been approved by the Court in which Individual A's estate is pending and has been delivered to the plan administrator for IRA L.

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Copies of Trust F and information required to be provided to the plan administrators prior to the end of nine months after the death of Individuals A and B pursuant to section 1.401(a)(9)-1 Q&A D-7 of the Proposed Income Tax Regulations have, in fact, been so provided. The trustees may decide to terminate Trust F when all trust purposes and intents have been satisfied.

Individuals A and B were survived by two adult children, Individuals C and D, both of whom are beneficiaries of Trust G and are identifiable by the terms of Trust G. Each of these beneficiaries is less than 70 1/2 years of age. Individuals C and D would like to have separate and equal shares of IRAs K and L created for each of them and transferred in trustee-to-trustee transfers to separate IRA trustees to allow for management according to the individual beneficiary's investment objectives. Upon in-kind distribution of the inherited IRAs, the two beneficiaries would like to convert such new IRAs to Roth IRAs.

Based upon the above information, your authorized representative has requested the following rulings:

(1) That the disclaimers executed on behalf of Individual A and his estate are qualified disclaimers as that term is defined in section 2518(b) of the Internal Revenue Code.

(2) That Trust F satisfies section 1.401(a)(9)-1 Q&A D-5 and D-6 of the proposed regulations in that Individuals C and D are designated beneficiaries of IRAs K and L for purposes of determining the distribution period under section 401(a) (9) of the Internal Revenue Code.

(3) That distributions from IRAs K and L to Trust F will qualify as exceptions to the five-year rule under section 401(a)(9)(B)(iii) of the Code, allowing such distributions to be made over the time period measured by the life expectancy of Individual C, the designated trust beneficiary with the shortest life expectancy.

(4) That the creation of two equal IRA subaccounts for the two beneficiaries, Individuals C and D, will not affect the tax deferred status of the funds and will not be treated as a taxable distribution.

(5) That the trustee-to-trustee transfer of the existing IRAs IRAs K and L to new IRA accounts will not constitute the payment or distribution of taxable funds to the beneficiaries and is not a rollover contribution prohibited by Code section 408(d)(3)(C).

(6) That subsequent to the trustee-to-trustee transfers of the IRA assets as described above, the two trust beneficiaries, Individuals C and D, will each be allowed to take distributions

from their respective separate new IRAs over the life expectancy of Individual C, the older of the two trust beneficiaries.

(7) That subsequent to the trustee-to-trustee transfers of the IRA assets as described above, and the termination of Trust F, the new IRAs will satisfy the requirements under sections 408(a) and 40&3(d) (3) (C) of the Code.

(8) That the beneficiaries will be allowed to convert their inherited IRAs to Roth IRAs.

Section 2518(a) of the Code provides that, if a person makes a qualified disclaimer with respect to any interest in property, Subtitle B (relating to the estate, gift and generation-skipping transfer taxes) shall apply with respect to such interest as if the interest had never been transferred to such person.

Section 2518(b) of the Code provides that the term "qualified disclaimer" means an irrevocable and unqualified refusal by a person to accept an interest in property but only if-

(1) such refusal is in writing,

(2) such writing is received by the transferor of the interest, the transferor's legal representative, or the holder of the legal title to the property to which the interest related not later than the date which is 9 months after the later of-
(A) the date on which the transfer creating the interest in such person is made, or
(B) the day on which such person attains age 21,

(3) such person has not accepted the interest or any of its benefits, and

(4) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either-
(A) to the spouse of the decedent, or
(B) to a person other than the person making the disclaimer.

Section 2518(b) (2) of the Code requires that a disclaimer be made within nine months of the date of the transfer creating the interest. With respect to transfers made by a decedent at death, or transfers that become irrevocable at death, the transfer creating the interest occurs on the date of the decedent's death, even if an estate tax is not imposed on the transfer (See section 25.2518-2(a) (3) of the Income Tax Regulations).

Section 25.2518-2(d) (2) of the regulations provides that if a beneficiary who disclaims an interest in property is also a fiduciary, actions taken by such person in the exercise of

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fiduciary powers to preserve or maintain the disclaimed property shall not be treated as an acceptance of such property or any of its benefits. Under this rule, for example, an executor who is also a beneficiary may direct the harvesting of a crop or the general maintenance of a home. A fiduciary, however, cannot retain a wholly discretionary power to direct the enjoyment of the disclaimed interest. For example, a fiduciary's disclaimer of a beneficial interest does not meet the requirements of a qualified disclaimer if the fiduciary exercised or retains a discretionary power to allocate enjoyment of that interest among members of a designated class.

Under section 25.2518-2(e)(1) of the regulations, in order to constitute a qualified disclaimer, the disclaimed interest must pass without any direction on the part of the person making the disclaimer to a person other than the disclaimant. The requirements of a qualified disclaimer under section 2518 of the Code are not satisfied if the disclaimant, either alone or in conjunction with another, directs the redistribution or transfer of the property or interest in property to another person (or has the power to direct the redistribution or transfer of the property or interest in property to another person unless such power is limited by an ascertainable standard).

Section 25.2518-3(a)(1) of the regulations provides that the disclaimer of all or of an undivided portion of any separate interest in property may be a qualified disclaimer even if the disclaimant has another interest in the same property. In general, each interest in property that is separately created by the transferor is treated as a separate interest. For example, if any income interest in securities is bequeathed to A for life, then to B for life, with remainder interest in such securities bequeathed to A's estate, and if the remaining requirements of section 2518(b) are met, A could make a qualified disclaimer of either the income interest or the remainder, or an undivided portion of either interest. A could not, however, make a qualified disclaimer of the income interest for a certain number of years.

In Revenue Ruling 90-110, 1990-2 C.B. 209, a trustee executed and delivered to the executor of a decedent's estate a declaration to disclaim the power to invade corpus for the benefit of a specific beneficiary. The beneficiary neither consented to the trustee's disclaimer declaration nor made an individual disclaimer. The decedent's will did not authorize the trustee to make such a disclaimer and the disclaimer was not valid under state law. Rev. Rul. 90-110 holds that if a trustee acting solely in a fiduciary capacity disclaims a power to invade trust corpus for the benefit of a specific beneficiary and the disclaimer is ineffective under state law, the disclaimer is not a qualified disclaimer for purpose of section 2518(b) of the Code.

In the present case, the personal representatives of Individual A's estate have executed two written disclaimers on his behalf. One disclaimer disclaims any and all interest that Individual A or his estate may have to IRA L. The second disclaimer disclaims any rights Individual A may have had in any fiduciary or other capacity, including, but not limited to, the right to receive or direct distribution of income, as the appointed trustee of Trust G created under Trust F, as well as Individual A's appointment as trustee of Trust G. Both disclaimers have been approved by the court having jurisdiction over Individual A's estate and both have been delivered to the appropriate party. Individual A did not accept any benefits from the disclaimed property and the disclaimers are valid under State M law. Generally, the disclaimer of a trustee is not effective for purposes of section 2518 of the Code (See Rev. Rul. 90-110). However, in view of the fact that Individual A, in his capacity as trust beneficiary, has disclaimed all beneficial interest in both the corpus and the income of the trust, such disclaimers will be effective to terminate all of Individual A's interests in the trust and will constitute qualified disclaimers for purposes of section 2518(b) of the Code.

Therefore, with respect to your first ruling request, we find that the disclaimers executed on behalf of Individual A and his estate are qualified disclaimers as that term is defined in section 2518(b) of the Internal Revenue Code.

Section 408(a)(6) of the Internal Revenue Code generally provides that under regulations prescribed by the Secretary of the Treasury, rules similar to the rules of section 401(a)(9) of the Code 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 1.408-8, Q&A A-l of the proposed Income Tax Regulations states that individual retirement plans are subject to the distribution rules for qualified plans provided in section 401(a)(9) of the Code and section 1.401(a)(9)-1 of the proposed income tax regulations.

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 five years after the death of such employee.

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 401(a) (9) (E) of the Code defines the term "designated beneficiary" as any individual designated as a beneficiary by the employee.

Section 1.401(a) (9)-1 Q&A D-2A(a) of the proposed regulations provides, in part, that that only individuals may be designated beneficiaries for purposes of section 401(a)(9) of the Code. A person who is not an individual, such as the employee's estate, may not be a designated beneficiary.

Section 1.401(a) (9)-1 Q&A D-2A(b) of the proposed regulations, provides, in part, that (except as otherwise provided in D-5, D-6, and E-5(e)(1)), if a person other than an individual is designated as a beneficiary of an employee's benefit, the employee will be treated as having no beneficiary for purposes of section 401(a)(9) of the Code.

Section 1.401(a)(9)-1 Q&A D-5(a) of the proposed regulations provides, in part, that in the case in which a trust is named as beneficiary of an employee, all beneficiaries of the trust with respect to the trust's interest in the employee's benefit are treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)(ii) of the Code if, as of the later of the date on which the trust is named as beneficiary, or the employee's required beginning date, (1) the trust is a valid trust under state law, or would be except for the fact that there is no corpus, (2) the trust is irrevocable, (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, and (4) a copy of the trust instrument is provided to the plan.

Section 1.401(a)(9)-1 Q&A D-5(b) of the proposed regulations provides, in part, that pursuant to D-2A, only an individual may be a designated beneficiary. Consequently, a trust itself may not be the designated beneficiary even though the trust is named as a beneficiary. However, if the requirements in paragraph (a) are met, for purposes of section 401(a)(9), distributions made to the trust will be treated as paid to the beneficiaries of the trust with respect to the trust's interest in the employee's benefit.

Section 1.401(a)(9)-1 Q&A D-6 of the proposed regulations further provides that in the case in which a trust is named as 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) of the Code if the requirements of section 1.401(a)(9)-1, Q&A D-5 and other applicable requirements

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are satisfied as of the specified date. If the requirements are satisfied, distributions to the trust for purposes of section 401(a)(9) will be treated as being paid to the appropriate beneficiary of the trust with respect to the trust's interest in the employee's benefit. However, if a trust is named as a beneficiary of an employee and if, the requirements referenced in D-5 are not satisfied, the employee will be treated as not having a designated beneficiary under the plan.

Section 1.401(a)(9)-1 Q&A D-7(b) of the proposed regulations provides, in relevant part, that by the ninth month beginning after the death of the employee, the trustee of the trust must either provide the plan administrator with a final list of all of the beneficiaries of the trust (including contingent and remainderman beneficiaries with a description of the conditions of their entitlement) as of the date of death and certify that, to the best of the trustee's knowledge, this list is correct and complete or provide the plan administrator with a copy of the actual trust document for the trust that is named as a beneficiary of the employee under the plan as of the employee's date of death.

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

Section 1.401(a)(9)-1 Q&A H-2(a) of the proposed regulations provides, in pertinent part, that except as otherwise provided in paragraphs (b) and (c), if an employee's benefit under a plan is divided into separate accounts (or segregated shares in the case of a defined benefit plan), the separate accounts (or segregated shares) will be aggregated for purposes of satisfying the rules in section 401(a)(9).

Section 1.401(a)(9)-1 Q&A H-2(b) of the proposed regulations provides in pertinent part that if, as of the employee's date of death, the designated beneficiaries with respect to a separate account differ from the beneficiaries with respect to other separate accounts, such separate account need not be aggregated with other separate accounts for purposes of section 401(a)(9).

Section 1.401(a)(9)-1 Q&A H-2A of the proposed regulations provides that a separate account in an individual account is a portion of an employee's benefit determined by an acceptable separate accounting including allocating investment gains and losses, and contributions and forfeitures on a pro rata basis in a reasonable and consistent manner between such portion and any other benefits.

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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 result in such funds being paid or distributed to the participant. This revenue ruling further provides that in the absence of payment or distribution, the transfer would not be a rollover contribution because such funds are not within the direct control and use of the participant, and that this conclusion would apply whether the bank trustee initiates or the IRA participant directs the transfer of funds.

In this case, Trust F meets the requirements applicable to trusts in sections 1.401(a)(9)-1 Q&A D-2A, D-5 and D-6 of the proposed regulations with respect to its status as a named beneficiary of IRAs K and L (although only individuals such as Individuals C and D in this case may be designated beneficiaries for purposes of section 401(a)(9) of the Code). Distributions from IRAs K and L, which had not yet begun at the time of death of Individuals A and B, will be made over the life expectancy of Individual C, the designated beneficiary with the shortest life expectancy in accordance with section 1.401(a)(9)-1 Q&A E-5(a) and (b) of the proposed regulations.

Therefore, with regard to ruling request two, we conclude that Trust F satisfies section 1.401(a)(9)-1 Q&A D-5 and D-6 of the proposed regulations in that Individuals C and D are designated beneficiaries of IRAs K and L for purposes of determining the distribution period under section 401(a)(9) of the Internal Revenue Code.

With regard to ruling request three, we conclude that distributions from IRAs K and L to Trust F will qualify as exceptions to the five-year rule under section 401(a)(9)(B)(iii) of the Code, allowing distributions over the time period measured by the life expectancy of Individual C, the designated trust beneficiary with the shortest life expectancy.

With respect to ruling requests four and five, there is no prohibition against the creation of subaccounts within the IRAs representing the individual interests of multiple beneficiaries. In this case, the new IRAs will be maintained in the name of the deceased IRA participants, Individuals A and B, and the mere segregation into subaccounts of the interests of multiple beneficiaries by the IRA custodian at the request of the beneficiaries does not affect the character or qualifications of the trustees or of the IRAs. The act of segregation does not render any beneficiary's interest in such an IRA forfeitable, and does not subject the the beneficiaries to any tax consequences, in and of itself, as long as the IRAs are maintained in the name of Individual A. Here, the two equal subaccounts created for Individuals C and D satisfy the special rules provided in section 1.401(a)(9)-1 Q&A H-2 and H-2A of the proposed regulations and the principles established in Revenue Ruling 78-406, 1957-2 C.B. 157.

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Therefore, with regard to ruling request four, we conclude that the creation of two equal IRA subaccounts for the two beneficiaries will not affect the tax deferred status of the funds and will not be treated as a taxable distribution. With regard to ruling request five, we conclude that the trustee-to-trustee transfer of the existing IRAs, IRAs K and L, to new IRAs will not constitute the payment or distribution of taxable funds to the beneficiaries and is not a rollover contribution that would be prohibited by Code section 408(d)(3)(C), as long as the new IRAs are maintained in the name of the deceased IRA participants, Individuals A or B, respectively.

With respect to ruling request six, in accordance with section 1.401(a)(9)-1 Q&A E-5(a)(1) of the proposed regulations, if more than one individual is designated as a beneficiary, the designated beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the distribution period. Therefore, we conclude with regard to ruling request six that subsequent to the trustee-to-trustee transfers of the IRA assets as described above, the two trust beneficiaries will each be allowed to take distributions from their respective separate IRAs over the life expectancy of Individual C, the older of the two trust beneficiaries.

Section 408(d)(1) of the Code provides that, except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

Section 408(d)(3) of the Code provides that section 408(d)(l) does not apply to a rollover contribution if such contribution satisfies the requirements of sections 408(d) (3) (A) and (d)(3)(B).

Section 408(d) (3)(A)(i) of the Code provides that section 408(d) (1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the account is maintained if the entire amount received is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution.

Section 408(d)(3)(C)(i) of the Code provides, in part, that in the case of an inherited IRA, section 408(d)(3) shall not apply to any amount received by an individual from such account (and no amount transferred from such account to another IRA shall be excluded from income by reason of such transfer), and such inherited account shall not be treated as an IRA for purposes of determining whether any other amount is a rollover contribution.

Section 408(d)(3)(C)(ii) of the Code provides that an IRA shall be treated as inherited if the individual for whose benefit the account is maintained acquired such account by reason of the

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death of another individual, and such individual was not the surviving spouse of such other individual.

Section 1.408-8 Q&A A-4 of the proposed regulations provides that a surviving spouse is the only individual who may elect to treat a beneficiary's interest in an IRA as the beneficiary's own account.

Section 408A of the Code, added by section 302 of the Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 788), established the Roth IRA as a new type of individual retirement plan.

Section 408A(e) of the Code provides that the term qualified rollover contribution means a rollover contribution to a Roth IRA from another such account, or from an individual retirement plan, but only if such rollover contribution meets the requirements of section 408(d) (3).

Section 1.408A-4 of the proposed regulations provides rules relating to the conversion of traditional IRAs into Roth IRAs. Under section 1.408A-4, any amount converted from a non-Roth IRA to a Roth IRA is treated as distributed from the non-Roth IRA and rolled over to the Roth IRA regardless of the actual means by which the conversion is effected. The conversion amount is generally includible in gross income for the year of the conversion under section 408(d) (1) and 408(d) (2). However, the conversion amount must be a qualified rollover contribution under section 408A(e) and, therefore, must satisfy section 408(d) (3) of the Code.

With respect to ruling request seven, trustee-to-trustee transfers from IRAs K and L will be made to the new IRAs, established by Individuals C and D, respectively. The new IRAs, although for the benefit of Individuals C and D, will be maintained in the name of either Individual A or Individual B, the deceased IRA participants. You have represented that, in accordance with sections 408(a) (6) and 401(a)(9) of the Code, minimum required distributions will be made from the new IRAs over the life expectancy of Individual C, the older of the two trust beneficiaries, and such amounts will be included in gross income by Individuals C and D.

Thus, with regard to ruling request seven, we conclude that subsequent to the trustee-to-trustee transfers of the IRA assets as described above, and the termination of Trust F, the new IRAs will satisfy the requirements of sections 408(a) and 408(d)(3)(C) of the Code.

With respect to ruling request eight, IRAs K and L are treated as inherited IRAs in accordance with section 408(d)(3)(C)(ii) of the Code. A distribution from such an IRA to a non-spouse is not eligible for treatment as a qualified rollover contribution under sections 408A(e) and 408(d) (3) of the Code, and section 1.408A-4 of the proposed regulations. Therefore, with regard to ruling request

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eight, we conclude that the beneficiaries will not be allowed to convert their inherited IRAs to Roth IRAs.

This ruling letter is based on the assumption that all of the IRAs referenced herein meet the requirements of section 408(a) of the Code at all times relevant to the transactions described.

In accordance with a power of attorney on file with this office, this letter is being sent to your authorized representative.

Sincerely yours,

Alan Pipkin, Manager
Employee Plans Technical Group 5
Tax Exempt and Government
Entities Division

Enclosures:

Notice of Intention to Disclose
Deleted copy of letter

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