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

200211047

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

T:EP:RA:T3
UIL: 401.00-00
408.00-00

Date: DEC 17 2001

Legend:

Decedent A =

B =

C =

D =

E =

Custodian F =

Trust G =

IRA W =

IRA X =

IRA Y =

IRA Z =

Dear

This is in your response to a request for a ruling, dated September 28, 2000, on behalf of B, C, D, and E, concerning the federal income and estate tax consequences of certain transactions under Sections 408 and 401(a)(9) with respect to Individual Retirement Account ("IRA") distributions following the death of Decedent A. Correspondence dated December 22, 2000, and May 9.2001, supplemented the request.

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Decedent A died ************* at the age of 62. At the time of his death he did not have a spouse. At the time of death: Decedent A had four IRAs: IRA W, IRA X, IRA Y and IRA X. Decedent A had taken an occasional distribution from his IRAs but had not elected a formal payout scheme.

At the time of Decedent A's death, he owned four separate IRAs at four separate custodians, the largest of which was kept at Custodian F. The beneficiary of all four IRAs was Trust G, Decedent A's revocable trust, as of the date of his death

Following Decedent A's death, the Successor Trustees took steps to consolidate all four IRAs via Trustee-to-Trustee or Custodian-to-Custodian transfers into the single IRA previously existing at Custodian F. The beneficiaries of all four IRAs was identical both before and after the consolidation. Decedent A did not make any election with respect to post-death distributions. While Trust G is a named beneficiary, the oldest child (B) is considered the Designated Beneficiary for distribution purposes. Trust G is a valid Trust under state law; became irrevocable upon Decedent A's death, and the Trust G beneficiaries are identifiable from the Trust G Agreement.

As of the date of death, Trust G became an irrevocable Trust. Trust G named his four children (B, C, D, and E) and seven grandchildren as beneficiaries. The proceeds of the IRA will be transferred to B,C,D, and E as part of the trust distribution. The IRA is to be divided equally among the beneficiaries B, C, D, and E, and distributed outright to them, in three equal installments, the first occurring after Decedent A's death, the second as of the third anniversary of death, and the last as of the sixth anniversary of death. The grandchildren are contingent beneficiaries who are entitled to take their parents share if their parents do not live to take their installment.

D and E are Successor Trustees under their father's Revocable Trust G. These children have been named "Successor Trustees" above.

Following Decedent A's death, the Successor Trustees filed with Custodian F a Certificate of Trust Existence and Authority and Certificate Regarding Trust Distribution of Retirement Benefits After Death. All children and grandchildren were named in the Certificate. This was done within the nine month required time frame of proposed Reg. 1.401 (a)(9)-1 Q&A D-7. The Successor Trustees elected a payment of the Decedents IRA prior to December 31 of the year following the Decedents death. Such payout was made to Trust G, which then distributed the payout equally to the four children. The payment election was based on the life expectancy of the oldest child (B).

The Estate Trust settlement process has progressed to a point where the first Estate Trust distribution to the children can occur. The Successor Trustees desire to split the single consolidated IRA into four equal and identical IRAs, except that each IRA would be payable for the benefit of one of the four children of Decedent A. The Trustees then desire to transfer each separate IRA to each child of the deceased as part of the first Trust G distribution, Each IRA will continue to be held at Custodian F, and be established as Decedent A IRA. Each child then proposes to continue the distribution format from each separate IRA, payable over the fixed life expectancy of the eldest child, as elected by the Successor Trustees. For all relevant times, Decedent A and the Children are all U.S. citizens; the accounting period is the calendar year; and the accounting method is the cash basis.

Based upon the above facts, rulings are requested that:

1. The consolidation of four separate IRAs into a single IRA following the death of the owner, via custodian to custodian transfers and the subsequent splitting of the consolidated IRA into four separate IRAs via custodian to custodian transfer will not be considered a taxable withdrawal or taxable distribution and thus not subject to any income tax.

2. The timely filing of the Trust Beneficiary Certification with the consolidated IRA custodian allows the beneficiaries of the Trust to be considered designated beneficiaries of the consolidated IRA.

3. Distributions from the IRA to the Trust must have commenced by December 31. of the year following death, based upon the age of the oldest child (as all four children were beneficiaries of a single trust as of the date of the owner's death).

4. Distributing each separate IRA out of the Trust to each beneficiary as part of the Trust distribution is also a custodian to custodian transfer and will not be considered an IRA withdrawal or IRA distribution, so long as each IRA is kept in the name of the deceased f/b/o child, using the child's social security number.

5. Each child will succeed to whatever powers the IRA custodian grants to a beneficiary, including the right to direct investments, accelerate distributions, and name contingent beneficiaries in case of death.

6. Each IRA will be subject to inclusion in each child's estate upon his/her death for federal estate tax purposes, as each child has the right to control IRA investments and distributions from the separate IRA.

7. If the IRA is included in each child's estate for federal estate tax purposes, each IRA would also be subject to a marital deduction (assuming it otherwise qualifies for the marital deduction) should the child name his/her spouse as contingent beneficiary in the event the child dies before the IRA is exhausted

8. The splitting of the IRA into four separate IRA's (one for each child) and the naming by a child of a contingent beneficiary will not change the required minimum distribution and each IRA must continue to be withdrawn over the life of the oldest child's fixed life expectancy, unless accelerated by any of the children (or after the child's death, accelerated by his/her contingent beneficiary).

With respect to ruling requests 1,2,3,4, and 8, 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

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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

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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 trusts 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)(l), 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)(l), 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, Decedent A died having ownership of IRAs W, X, Y, and Z, and prior to attaining his required beginning date under section 401(a)(9) of the Code. Trust G, which became irrevocable at the death of Decedent A, is the named beneficiary of IRAs W, X, Y, and Z. B, C, D, and E, Decedent A's children, and his grandchildren are the Trust G beneficiaries who are entitled to receive amounts distributed from the IRAs. B is the eldest beneficiary entitled to receive IRA X distributions. Under the IRA to be maintained at Custodian F, an election will made to receive distributions from the IRA in accordance with the exception to the five-year rule, found in section 401(a)(9)(B)(iii) over the life expectancy of B. Pursuant to section 1.401 (a)(9)-1 of the proposed regulations, Q&A C-3(a), distributions from the IRA must have commenced no later than December 31 of the calendar year following the calendar year of Decedent A's death.

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

B is the eldest beneficiary entitled to receive distributions from the IRA. Furthermore, as noted above, distributions from the IRA will begin over B's life expectancy no later than December 31 of the calendar year following the calendar year of Decedent A's death.

Thus, with respect to your ruling requests 1,2,3,4, and 8, we conclude as follows:

1. The consolidation of four separate IRAs into a single IRA following the death of the owner, via custodian to custodian transfers and the subsequent splitting of the consolidated IRA into four separate IRAs via custodian to custodian transfer will not be considered a taxable withdrawal or taxable distribution and thus not subject to any income tax.

2. The timely filing of the Trust Beneficiary Certification with the consolidated IRA custodian allows the beneficiaries of the Trust to be considered designated beneficiaries of the consolidated IRA.

3. Distributions from the IRA to the Trust must commence by December 31. of the year following death, based upon the age of the oldest child (as all four children were beneficiaries of a single trust as of the date of the owner's death).

4. Distributing each separate IRA out of the Trust to each beneficiary as part of the Trust distribution is also a custodian to custodian transfer and will not be considered an IRA withdrawal or IRA distribution, so long as each IRA is kept in the name of the deceased f/b/o child, using the child's social security number.

8. The splitting of the IRA into four separate IRA's (one for each child) and the naming by a child of a contingent beneficiary will not change the required minimum distribution and each IRA must continue to be withdrawn over the life of the oldest child's fixed life expectancy, unless accelerated by any of the children (or after the child's death, accelerated by his/her contingent beneficiary).

Wth respect to ruling request 6, section 408(a) of the Code provides that an IRA is a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the requirements of sections 408(a)(l) - 408(a)(6).

Section 2031 of the Code provides that the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.

Section 2033 of the Code provides that the value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.

Section 20.2031-1(a) of the Estate Tax Regulations provides that the value of the gross estate of a decedent who was a citizen or resident of the United States at the time of his death is the total value of the interests described in sections 2033 through 2044 of the Code. Section 2041 (a)(2) of the Code provides that the value of the gross estate shall include the value of all property to the extent of any property with respect to which the decedent has at the time of death a general power of appointment created afler October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition that is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedents gross estate under sections 2035 to 2038, inclusive.

Section 2041 (b) of the Code provides that the term “general power of appointment” means a power that is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate. Section 20.2041-1(b) of the regulations provides that the term “power of appointment” includes all powers which are in substance and effect powers of appointment regardless of the nomenclature used in creating the power and regardless of local property law connotations. For example, if a trust instrument provides that the beneficiary may appropriate or consume the principal of the trust, the power to consume or appropriate is a power of appointment.

It is represented that each child will have the right to direct the investments of his/her IRA, name contingent beneficiaries in case of that child’s death, and accelerate distributions from that IRA. It is also represented that each separate IRA will be distributed from Trust to each child as part of the first distribution of Trust.

Based upon the information submitted and the representations made, we conclude, with respect to ruling request 6, that each IRA is includible in each child’s gross estate under section 2041, because each child possesses a general power of appointment over the IRA property.

With respect to ruling request 7, section 2056(a) of the Code provides that for purposes of the tax imposed by section 2001, the value of the taxable estate shall, except as limited by subsection (b), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse, but only to the extent that such interest is includible in determining the value of the gross estate.

Section 2056(b) of the Code provides that where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail, no deduction will be allowed under section 2056(a) with respect to the interest -- (A) if an interest in the property passes or has passed from the decedent to any person other than the surviving spouse (or the estate of the spouse); and, (B) if by reason of such passing the person (or his heirs or assigns) may possess or enjoy any part of the property after the termination or failure of the interest passing to the surviving spouse. Section 2056(b)(5) provides an exception to this "terminable interest" rule. Generally under section 2056(b)(5), in the case of an interest in property passing from the decedent, if his surviving spouse is entitled for life to all the income from the entire interest, or all the income from a specific portion, payable annually or at more frequent intervals, with power in the surviving spouse to appoint the entire interest, or such specific portion (exercisable in favor of such surviving spouse, or the estate of such surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), and with no power in any other person to appoint any part of the interest, or such specific portion, to any person other than the surviving spouse -- (A) the interest or such portion thereof so passing shall, for purposes of subsection (a), be considered as passing to the surviving spouse, and (B) no part of the interest so passing shall, for purposes of paragraph (l)(A), be considered as passing to any person other than the surviving spouse. The power to appoint, whether exercisable by will or during life, must be exercisable by such spouse alone and in all events.

Section 20.2056(b)-5(f)(8) of the regulations provides that the requirement that the surviving spouse must be entitled for life to all income, payable at least annually, will be satisfied if under the terms of the trust instrument the spouse has the right exercisable annually (or more frequently) to require distribution to herself of the trust income, and otherwise the trust income is to be accumulated and added to corpus.

Section 2056(b)(7)(A) of the Code provides that, in the case of qualified terminable interest property, for purposes of the marital deduction, such property shall be treated as passing to the surviving spouse, and not to any person other than the surviving spouse.

Section 2056(b)(7)(B)(i) of the Code provides that the term "qualified terminable interest property" (QTIP) is property that passes from the decedent, in which the surviving spouse has a qualifying income interest for life, and to which an election under this paragraph applies. The surviving spouse has a qualifying income interest for life if the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, and no person has a power to appoint any part of the property to anyone other than the surviving spouse.

It is represented that each child of Decedent proposes to designate his/her spouse or to designate a QTIP trust for the benefit of spouse as contingent beneficiary of the IRA, in the event the child dies before the balance in the IRA has been distributed to the child.

Based upon the information submitted and the representations made, we conclude, with respect to ruling request 7, that if the IRA is included in each child's estate for federal estate tax purposes, each IRA would also be subject to a marital deduction (assuming it otherwise qualifies for the marital deduction) should the child name his/her spouse or a QTIP trust for the benefit of child's spouse as contingent beneficiary in the event the child dies before the IRA is exhausted.

Pursuant to section 4 of Revenue Procedure 2001-4, 2001-1, I.R.B. 121 we will not rule on ruling request five, because it is not within the jurisdiction of the Internal Revenue Service.

This ruling assumes that all of the IRAs either have met, or will meet the requirements of Code section 406(a) at all times relevant thereto.

This ruling is directed solely to the taxpayer who requested it. Code section 611 O(k)(3) provides that it may not be used or cited by others as precedent,

If you have any questions concerning this ruling, please contact **************** (ID ** ****) at (***) ***-**** (not a toll free number).

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, Manager
Employee Plans, Technical Group 3
Tax Exempt and Government Entities Division

Enclosures:
Deleted copy of letter
Notice of Intention to Disclose
Copy of Letter to Authorized Representatives

cc: