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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUN 2 2 2004

UICs: 401.06-01
401.06-02

Attn:

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Taxpayer D:

Taxpayer E:

Date 1:

Year 1:

Date 2:

Year 2:

Date 3:

Year 3:

Date 4:

Year 4:

Date 5:

Year 5:

Date 6:

Year 6:

Date 7:

Year 7:

Date 8:

Date 9:

Date 10:

Year 8:

Plan X:

Trust Y:

Subtrust O:

Subtrust P:

Trustee Z:

Company M:

Disclaimer N:

State S:

State T:

Amount 1:

This is in response to the request for letter rulings submitted on your behalf by your authorized representative, as supplemented by correspondence dated , , and , in which you request a series of letter rulings under § 401(a)(9) of the Internal Revenue

Code ("Code"). The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 1, Year 1, died on Date 2, Year 2, while a resident of State S. Taxpayer A was years of age at his death; thus, he had not attained his required beginning date as that term is defined in Code § 401(a)(9)(C).

Taxpayer A was survived by his spouse, Taxpayer B, whose date of birth was Date 3, Year 3. Taxpayer A was also survived by three children, Taxpayer C whose date of birth was Date 4, Year 4, Taxpayer D, whose date of birth was Date 5, Year 5, and Taxpayer E, whose date of birth was Date 6, Year 6. Taxpayer B is older than either Taxpayer C, Taxpayer D, or Taxpayer E.

Prior to his death, Taxpayer A participated in Plan X maintained by Company M. As of Date 9, Year 2, Taxpayer A's Plan X account balance was Amount 1.

On Date 7, Year 7, Taxpayer A established Trust Y. Trustee Z is the trustee of Trust Y.

On Date 10, Year 8, Taxpayer A, by written designation, named Trust Y as the beneficiary of his interest in Plan X.

Article II(1) of Trust Y provides that, upon the death of Taxpayer A, Trustee Z is to create Subtrust O which is to funded with a fractional formula intended to eliminate federal estate tax and state death tax. Article II(2) of Trust Y provides that the residue, after funding Subtrust O, is to be held in Subtrust P.

Article II(3) of Trust Y provides that, during the lifetime of Taxpayer B, Trustee Z is to pay her the net income of Subtrusts O and P.

Article II(3) of Trust Y further provides that, during Taxpayer B's lifetime, Trustee Z is to pay her the principal of Subtrusts O and P as the trustee deems proper for Taxpayer B's welfare.

Article II(4) of Trust Y provides that, upon the death of Taxpayer B, Taxpayer B may appoint Subtrusts O and P to, or for the benefit of, Taxpayer A's lineal descendants and their spouses. On Date 8, Year 2, Taxpayer B executed a disclaimer of this limited power of attorney which your authorized representative asserts is qualified under relavant State law. Date 8, Year 2, is within nine (9) months of Date 2, Year 2 (Taxpayer A's date of death). As a result of Taxpayer B's disclaimer, under Article II(4) of Trust Y, Trust Y is to be divided among and held in separate trusts for Taxpayer A's lineal descendants then living, per stirpes.

Article II(5) of Trust Y provides, in relevant part, that the trustee thereof shall pay each lineal descendant of Taxpayer A his/her separate trust at age 30 upon the death of Taxpayer B. Each lineal descendant of Taxpayer A had attained age 30 prior to the death of Taxpayer A.

Article II(5) of Trust Y further provides for limited powers of appointment to Taxpayer A's lineal descendants and provides for the disposition of the trust property of said descendants in the absence of exercise of said power(s) of appointment.

Article II(7) of Trust Y provides for the disposition of trust property if said property is not disposed of under any other Article of Trust Y.

Your authorized representative has asserted on your behalf that:

(1) Trust Y is valid under the laws of State T, the law governing Trust Y pursuant to Article III(6) thereof;

(2) Trust Y became irrevocable upon the death of Taxpayer A (see Article I(1) thereof); and

(3) The documentation required under section 1.401(a)(9)-4 of the "Final" Regulations was provided to the Plan X administrator on or before October 31, 2003.

Section 222.21(2)(a) of the Statutes of State S provide, in relevant part, that any money or other assets payable to a participant or beneficiary from, or any interest of any participant or beneficiary in, a retirement or profit-sharing plan that is qualified under section 401(a) of the Code, as amended, is exempt from all claims of creditors of the beneficiary or participant.

Based on the above facts and representations, you, through your authorized representative, request the following letter rulings:

(1) That Trust Y constitutes a qualified "see-through" trust within the meaning of section 1.401(a)(9)-4 of the "Final" Regulations, Question and Answer-5;

(2) that if Taxpayer B is living on September 30, 2004, required minimum distributions from Taxpayer A's interest in Plan X may be calculated based upon Taxpayer B's life expectancy; and

(3) the Service's response to the second ruling request does not change if Taxpayer B were to die prior to September 30, 2004.

With respect to your ruling requests, Code section 401(a)(9)(A) provides, in general, that a trust will not be considered qualified 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, 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.

Code § 401(a)(9)(B)(ii) provides, in summary, 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 the employee.

Code § 401(a)(9)(B)(iii) provides, in general, that if any portion of the interest of a deceased plan participant is payable to (or for the benefit of a designated beneficiary), such portion will be distributed beginning not later than 1 year after the date of the deceased's death (or a later date as prescribed by the Secretary under Regulations) in accordance with regulations over the life of the designated beneficiary (or a period not extending beyond the life expectancy of the beneficiary).

Section 401(a)(9)(C) of the Code provides, in relevant part, that, for purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the later of (I) the calendar year in which the employee attains age 70 ½, or (II) the calendar year in which the employee retires.

Section 401(a)(9)(E) of the Code provides, in summary, that the term "designated beneficiary" means any individual designated as a beneficiary by the employee.

With respect to your ruling requests, "Final" Income Tax Regulations under Code sections 401(a)(9) and 408(a)(6) were published in the Federal Register at 67 Federal Register 18987-19028 (April 17, 2002), and in the Internal Revenue Bulletin at 2002-19 I.R.B. 852 (May 13, 2002). The Preamble to the "Final" Regulations, in relevant part, provide that the regulations apply for determining required minimum distributions for calendar years beginning after January 1, 2003.

Section 1.401(a)(9)-3 of the "Final" regulations, Q&A-1, describes, in relevant part, the "life expectancy" exception to the 5-year rule.

Section 1.401(a)(9)-3 of the "Final" regulations, Q&A-3(a) provides, in general, that, with respect to the life expectancy exception to the 5-year rule described in Code § 401(a)(9)(B)(iii), and in A-1, distributions are required to begin to a non-spouse beneficiary on or before the end of the calendar year immediately following the calendar year in which the employee died. Q&A-3(a) adds that this rule also applies to the distribution of the entire remaining benefit if another individual is a designated beneficiary in addition to the employee's surviving spouse.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-5(b), provides, in general, that if an employee dies before his required beginning date, in order to satisfy the requirements of Code § 401(a)(9)(B)(iii) or (iv) and the life expectancy rule described in A-1 of § 1.401(a)(9)-3, the applicable distribution period for distribution calendar years after the distribution calendar year containing the employee's date of death is determined in accordance with paragraph (c) of this A-5.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-5(c)(1), provides, in general, that, with respect to a non-spouse beneficiary, the applicable distribution period measured by the beneficiary's remaining life expectancy is determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the employee's death. In subsequent calendar years, the applicable distribution period is reduced by one for each calendar year that has elapsed after the calendar year immediately following the calendar year of the employee's death.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-4(a), provides, in relevant part, that in order to be a designated beneficiary, an individual must be a beneficiary as of the date of (the employee's or IRA holder's) death. Generally, an employee's designated beneficiary will be determined based on the beneficiaries designated as of the date of death who remain beneficiaries as of September 30 of the calendar year following the calendar year of death.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-4(a) further provides, in relevant part, that any person who was a beneficiary as of the date of the employee's death but who is not a beneficiary as the following September 30 (e.g. because the person receives the entire benefit to which he is entitled before that September 30), is not taken into account in determining the employee's designated beneficiary for purposes of determining the distribution period after the employee's death.

The rule in Q&A-4(a) applies to amounts distributed from a qualified plan which pass through a valid "see-through" trust.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-4(c) provides, in relevant part, that, for purposes of this A-4, an individual who is a beneficiary as of the date of the employee's death and dies prior to September 30 of the calendar year following the calendar year of death, without disclaiming, continues to be treated as a beneficiary for purposes of determining minimum required distributions after the employee's death without regard to the identity of the employee's successor beneficiary. This rule is summarized in the Preamble to the "Final" Regulations.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-7(a)(1) provides, that, except as otherwise provided in paragraph (c) of this A-7 (not pertinent to this ruling request), if more than one individual is designated as a beneficiary with respect to an employee as of the applicable date, the designated beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the applicable distribution period.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-3, 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-5 of §1.401(a)(9)-4 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 within the meaning of A-1 of this section from the trust instrument.

(4) The documentation described in A-6 of this section has been provided to the plan administrator.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-6(b), provides, generally, with respect to required minimum distributions after the death of the employee, that documentation described therein must be provided by the trustee of the trust/beneficiary to the plan administrator by October 31 of the calendar year following the calendar year in which the employee died.

Section 1.401(a)(9)-8 of the "Final" regulations, Q&A-2(a) provides the "separate account" rules with respect to defined contribution plans. A "separate account" is an account under which the beneficiary or beneficiaries differ from the beneficiary or beneficiaries of the other accounts. In general, if separate accounts are set up, for years subsequent to the calendar year containing the date on which the separate accounts were established, or the date of death if later, a separate account under a plan is not aggregated with the other separate accounts under the plan in order to determine whether the distributions from such separate account satisfy the requirements of Code § 401(a)(9). Instead, the rules in Code § 401(a)(9) apply separately to each separate account under the plan.

Section 1.401(a)(9)-8 of the "Final" regulations, Q&A-3, provides that a separate account is a separate portion of an employee's benefit which reflects the separate interest of an employee's beneficiary under the plan as of the employee's death for which separate accounting is maintained. The separate accounting must allocate all post-death investment gains and losses, contributions and forfeitures, for the period prior to the establishment of the separate accounts on a pro-rata basis in a consistent and reasonable manner among the separate accounts.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-5(c), provides, in relevant part, that the separate account rules under A-2 of § 1.401(a)(9)-8 are not available to beneficiaries of a trust with respect to the trust's interest in the employee's benefit.

Section 1.401(a)(9)-9 of the "Final" regulations provides the life expectancy and distribution period tables used to determine minimum required distributions. The Uniform Lifetime Table is the table to be used to determine the life expectancy of an individual.

With respect to your ruling request, Trust Y is the named beneficiary of Taxpayer A's interest in Plan X. Your authorized representative has asserted, on your behalf, that Trust Y is a valid trust under the laws of State T; that Trust Y became irrevocable upon the death of Taxpayer A (as provided for under Article I(1) of Trust Y); and that relevant documentation relating to Trust Y's status as the beneficiary of Taxpayer A's interest in Plan X was given to the administrator of Plan X by the date required under the "Final" Regulations. Furthermore, the Service notes that the identity of each person or entity entitled to receive any portion of Taxpayer A's interest in Plan X upon Taxpayer A's death is determinable by perusing the provisions of Trust Y.

Thus, with respect to your first ruling request, we determine as follows:

(1) That Trust Y constitutes a qualified "see-through" trust within the meaning of section 1.401(a)(9)-4 of the "Final" Regulations, Question and Answer-5.

With respect to your second and third ruling requests, relevant provisions of Trust Y provide that, upon the death of Taxpayer A, Taxpayer B became entitled to income and principal, subject to a standard, from both Subtrust O and Subtrust P created under the provisions of Trust Y. Since Taxpayer B's interests in Subtrusts O and P are not unlimited, it becomes necessary to determine which other beneficiaries of Trust Y must be considered in determining who, if anyone, may be treated as Taxpayer A's designated beneficiary with respect to his interest in Plan X.

In this regard, we note that the right of Taxpayer A's three children, Taxpayers C through E, to take their remainder interests was contingent upon each child's attaining age 30. However, we also note that each child had attained age 30 prior to Taxpayer A's death. Thus, upon the death of Taxpayer A, each of Taxpayer A's children had an unrestricted right to a portion of the remainder interest in the Trust Y estate including Taxpayer A's interest in Plan X. Furthermore, as noted above, Taxpayer B is older than each of Taxpayer A's three children.

Since the right of each child to his/her remainder interest in the Trust Y estate, including Taxpayer A's interest in Plan X, was unrestricted at the death of Taxpayer A, it is necessary to consider only Taxpayers B through E to determine which of them shall be treated as the designated beneficiary of Taxpayer A's interest In Plan X. Since Taxpayer B is the eldest of the four with the shortest remaining life expectancy, Taxpayer B may be treated as the designated beneficiary of said interest. Furthermore, since Taxpayers C through E had to be considered in determining who was the designated beneficiary, pursuant to section 1.401(a)(9)-3 of the "Final" regulations, Q&A-3(a), required distributions from said interest must begin no later than the end of the calendar year following the calendar year of Taxpayer A's death.

Finally, with specific request to your third ruling request, we note that, pursuant to section 1.401(a)(9)-4 of the "Final" regulations, Q&A-4(c), since Taxpayer B was alive at the death of Taxpayer A, as were Taxpayers C through E, if Taxpayer B were to die prior to or on September 30 of the calendar year (2004) following the calendar year of Taxpayer A's death, she would remain the designated beneficiary of Taxpayer A's Plan X interest.

Therefore, with respect to your second and third ruling requests, we conclude as follows:

(2) that if Taxpayer B is living on September 30, 2004, required minimum distributions from Taxpayer A's interest in Plan X may be calculated based upon Taxpayer B's life expectancy; and

(3) the Service's response to the second ruling request does not change if Taxpayer B were to die prior to September 30, 2004.

This letter ruling is based on the assumption that Plan X either meets, has met, or will meet the requirements of Code section 401(a) at all times relevant thereto. It also assumes that the disclaimer referenced herein is valid under relevant State law, as asserted, and meets the requirements of Code section 2518. Finally, it assumes that Trust Y is valid under State law as asserted.

This letter ruling is based on the facts and representations contained herein.

This letter is directed only to the taxpayer that requested it and is based solely on the representations made with respect thereto. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

The Service's point of contact with respect to this letter ruling is , Esq. (ID: ) who may be reached at (phone) (FAX).

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Manager, Employee Plans
Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose