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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UICs: 401.06-00
401.06-02

AUG - 3 2004

T:EP:BA:T3

LEGEND:

Taxpayer A =

Taxpayer B =

Taxpayer C =

Taxpayer D =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Trust T =

Subtrust W =

IRA X =

Company M =

State N =

Dear _____ :

This is in response to the _____, request for letter rulings under section 408(d)(3) of the Internal Revenue Code, as supplemented by correspondence dated _____, submitted on your behalf by your authorized representative. The request for letter rulings is based on the following facts and representations.

Taxpayer A, whose date of birth was Date 1, Year 1 died on Date 2, Year 3, at age _____ having reached her "required beginning date" as that term is defined in section 401(a)(9)(C) of the Internal Revenue Code. Taxpayer A was survived by a sister, Taxpayer B, and two nieces, Taxpayer C and Taxpayer D. Taxpayer B, Taxpayer C and Taxpayer D were alive as of the date of this ruling request.

As of her date of death, Taxpayer A was the owner of an individual retirement arrangement, IRA X, maintained with Company M. By means of a beneficiary designation dated Date 5, Year 4, Trust T was named the beneficiary of Taxpayer A's IRA X.

Sections 15-501, 20-904 and 20-905 of the Statutes of State N provide, in summary, that IRAs qualified within the meaning of Code section 408(a) are exempt from all claims against a decedent.

Trust T was executed on Date 3, Year 2. Section First of Trust T provides that the trust was revocable by Taxpayer A. Thus, at the death of Taxpayer A, Trust T became irrevocable. Taxpayers B, C, and D are the trustees of Trust T. Trust T is valid under the laws of State N.

Company M, the custodian of IRA X, has been provided with information concerning the terms of Trust T and the identity of the beneficiaries thereof.

Article Fourth, subparagraph A of Trust T, provides that at the death of Taxpayer A, the balance of Trust T, including IRA X, was to be held in trust for the benefit of Taxpayer B in a separate trust, Subtrust W, for her life.

Article Fourth, subparagraph A(3) of Trust T provides that upon the death of Taxpayer B, Subtrust W shall terminate and the Trustees shall pay over and distribute the Trust T assets to Taxpayers C and D, as then shall be living, in equal shares.

By an irrevocable disclaimer dated Date 4, Year 3, Taxpayer B disclaimed her interest in IRA X. The disclaimer, in relevant part, provides that Taxpayer B received no distribution of Trust T property. As a result of the disclaimer, pursuant to the terms of Trust T, IRA X was to be paid over and distributed in equal shares to Taxpayers C and D. Your authorized representative has asserted that the Date 4, Year 3, disclaimer meets the requirements of Code section 2518. Date 4, Year 3 is within nine (9) months of Date 2, Year 3.

The language of Trust T contains no conditions limiting the payment of IRA X to Taxpayers C and D.

The co-trustees of Trust T propose to divide IRA X, by means of trustee to trustee transfers, into two distinct individual retirement arrangements (IRAs). Each transferee IRA will be maintained in the name of Taxpayer A (deceased). One transferee IRA will be maintained for the benefit of Taxpayer C, beneficiary thereof as a result of being named such under Trust T. The second transferee IRA will be maintained for the benefit of Taxpayer D, beneficiary thereof as a result of being named such under Trust T.

Distributions from each of the transferee IRAs will be made over the life expectancy of Taxpayer C, the older of the two beneficiaries of IRA X (through Trust T)..

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

1. That Taxpayer A's IRA X may be subdivided, by means of a series of trustee to trustee transfers, so that a separate IRA may be created in the name of Taxpayer A (deceased) for the benefit of Taxpayer C.

With respect to your ruling request, Code section 408(a)(6) provides that, under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) 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 an IRA trust is maintained.

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.

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 calendar year in which the IRA holder attains age 70 1/2.

Code section 401(a)(9)(B)(i) provides, in general, that if a plan participant (IRA holder) dies after the distribution of his interest has begun in accordance with subparagraph (A)(ii) (before his required beginning date), his plan or IRA interest remaining at his death must be distributed at least as rapidly as under the method of distribution being used under subparagraph (A)(ii) as of the date of his death.

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)-4 of the "Final" regulations, Q&A-4, 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. Consequently, any person who was a beneficiary as of the date of the employee's date, but is not a beneficiary as of that September 30 is not taken into account in determining the employee's designated beneficiary for purposes of determining the distribution period for required minimum distributions after the employee's death. Accordingly, if a person disclaims entitlement to the employee's benefit pursuant to a disclaimer that satisfies § 2518 by that September 30 thereby allowing other beneficiaries to receive the benefits in lieu of that person, the disclaiming person is not taken into account in determining the employee's designated beneficiary.

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 section 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 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 within the meaning of A-1 of this section from the trust instrument.
- (4) relevant documentation has been timely provided to the plan administrator.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-5(a) provides, in summary, that if an employee dies on or after his required beginning date, the applicable distribution period for distribution calendar years after the distribution calendar year containing the employee's date of death is either—(1) If the employee has a designated beneficiary as of the date determined under A-4 of § 1.401(a)(9)-4, the longer of—

- (i) the remaining life expectancy of the employee's designated beneficiary determined in accordance with paragraph (c)(1) or (2) of this A-5; and

(ii) the remaining life expectancy of the employee determined in accordance with paragraph (c)(3) 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 an employee who has a non spouse designated 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 years, the applicable distribution 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)-5 of the "Final" regulations, Q&A-7, provides, in general, that if more than one beneficiary is designated as a beneficiary by an employee as of the applicable date for determining the designated beneficiary under A-4 of § 1.401(a)(9)-4, the beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining required distributions.

Section 1.401(a)(9)-9 of the "Final" regulations, Q&A-1, provides the relevant Single Life Expectancy Table.

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 section 401(a)(9). Instead, the rules in Code section 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 are not available to beneficiaries of a trust with respect to the trust's interest in an employee's benefit.

Code section 408(d)(1) provides, generally, that, in accordance with the rules of section 72, amounts paid or distributed from an IRA are included in the gross income by the payee or distributee.

Code section 408(d)(3)(C) provides, generally, that amounts from an "inherited" IRA cannot be rolled over into another IRA. In general, an "inherited" IRA is an IRA maintained by an individual

who acquired said IRA by reason of the death of another if the acquiring individual is not the surviving spouse of said other individual. In this case, as noted above, Taxpayers C and D are Taxpayer A's nieces.

Revenue Ruling 78-406, 1978-2 C.B. 157, provides that the direct transfer of funds from one IRA trustee to another IRA trustee, even if at the behest of the IRA holder, does not constitute a payment or distribution to a participant, payee or distributee as those terms are used in Code section 408(d). Furthermore, such a transfer does not constitute a rollover distribution.

Additionally, a trustee to trustee transfer, as described in Rev. Rul. 78-406, does not constitute a distribution or payment as those terms are defined for purposes of Code section 408(d).

Finally, Rev. Rul. 78-406 is applicable if the trustee to trustee transfer is directed by the beneficiary of an IRA after the death of the IRA owner as long as the transferee IRA is set up and maintained in the name of the deceased IRA owner for the benefit of the beneficiary.

The issue raised in this ruling request is whether beneficiary-nieces of an IRA holder may, after the death of the IRA holder, have their one-half interests in the deceased's IRA transferred to IRAs set up and maintained in the name of the deceased when each resulting IRA is set up solely to benefit one of the nieces.

Neither the Code nor the "Final" regulations promulgated under Code section 401(a)(9) preclude the posthumous division of IRA X into more than one IRA. However, the "Final" regulations do preclude "separate account" treatment for Code section 401(a)(9) purposes where amounts pass through a trust.

In this case, absent the Trust T trustees' decision to transfer, by means of trustee to trustee transfers, each niece's one-half interest in Taxpayer A's IRA X to her beneficiary IRA, as described above, distributions of the entire IRA X interest would have to be made over Taxpayer C's remaining life expectancy in accordance with section 1.401(a)(9)-5 of the "Final" regulations, Q&A- 5(c)(1). After the proposed trustee to trustee transfers, Taxpayers C and D will receive required distributions over Taxpayer C's remaining life expectancy. Thus, the proposed trustee to trustee transfers will have no effect on either the timing or the amount of minimum required distributions.

Thus, based on the specific facts and representations surrounding this ruling request, we conclude as follows:

1. That Taxpayer A's IRA X may be subdivided, by means of a series of trustee to trustee transfers, so that a separate IRA may be created in the name of Taxpayer A (deceased) for the benefit of Taxpayer C.

This ruling letter is based on the assumption that IRA X and the beneficiary IRA created after the trustee to trustee transfers and set up to benefit Taxpayer D either have met, are meeting, or will meet the requirements of Code section 408 at all times relevant thereto.

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

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

If you have any questions concerning this letter ruling, please contact _____, Esquire (ID: _____)
) of this Group. He may be reached at _____ (Phone) or _____ (FAX).

Sincerely Yours,



Frances V. Sloan
Manager, Employee Plans Division
Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose