



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

NOV 22 2005

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UICs: 401.06-02  
408.03-00

SE: T: EP: RA: T 3

Attn:  
Trustee

**LEGEND:**

Taxpayer A:

Taxpayer B:

Taxpayer C:

Taxpayer D:

Taxpayer E:

Company A:

Company B:

IRA X:

IRA Y:

Trust T:

Trustee W:

Subtrust A:

Subtrust B:

State U:

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Amount 1:

Percentage 1:

Percentage 2:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Month 1:

Dear [REDACTED]:

This is in response to the [REDACTED] letter submitted on your behalf by your authorized representative(s), as supplemented by two pieces of correspondence dated [REDACTED], in which they, on your behalf, request a series of letter rulings under sections 401(a)(9), and 408(d) of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 1, 1936, died on Date 2, 2004, a resident of State U, without having attained age 70 ½. Taxpayer A was married at his death and was survived by his spouse, Taxpayer B. Taxpayer B's date of birth was Date 3, 1938.

At his death, Taxpayer A maintained IRA X, an individual retirement account represented to be qualified within the meaning of Code section 408(a), with Company A. During Month 1, 2005, IRA X was transferred, by means of a trustee-to-trustee transfer, to IRA Y maintained with Company B.

On or about Date 4, 1995, Taxpayer A executed Trust T. On or about Date 5, 2003, Taxpayer A amended and restated Trust T. Trustee W is the trustee of Trust T. It has been represented that at all times relevant to this request for letter ruling, Trust T, and Subtrust B created under its terms, was/is valid under the laws of State U. It has also been represented that, pursuant to

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Article Four, Section 1.d., Trust T became irrevocable at the death of Taxpayer A. Finally, it has been represented that the documentation described in section 1.401(a)(9)-4, Question and Answer-6, of the "Final" Income Tax Regulations was provided to the administrator/custodian of IRA X (now IRA Y) prior to October 31, 2005.

On or about Date 5, 2003, Taxpayer A named Subtrust B as the beneficiary of his IRA X.

As of Date 7, 2005, the value of IRA X (IRA Y) was approximately Amount 1.

At the death of Taxpayer A, pursuant to Article Eight, Trust T was divided into Subtrust A and Subtrust B. It has been represented that, pursuant to Taxpayer A's Date 5, 2003 beneficiary designation, IRA X has been allocated in its entirety to Subtrust B.

In general, Article Ten, Sections 1 and 2, of Trust T give the trustee thereof the absolute discretion to distribute to Taxpayer B and Taxpayer A's descendants as much of both the net income and the principal of Subtrust B as the trustee deems necessary or advisable for their health, education, and maintenance. Article Ten, Section 1, further provides that "Any net income of Subtrust B which is not distributed by my Trustee shall be accumulated and added to the principal of Subtrust B". Article Ten, Section 5.a., of Trust T provides that "My Trustee shall, at all times, give primary consideration to the health, education, and maintenance of my spouse, and only thereafter to my descendants". Article Ten, Section 6, of Trust T gives Taxpayer B, Taxpayer A's surviving spouse, a limited testamentary power of appointment over the principal and accrued and undistributed net income of Subtrust B remaining at Taxpayer B's death in favor of Taxpayer A's descendants. Article Ten, Section 8, and Article Eleven of Trust T, when read in combination, provides that if Taxpayer B fails to exercise her limited power of appointment, the remaining principal of Subtrust B shall be paid to the following individuals in the percentages indicated:

Taxpayer C, Taxpayer A's son, Percentage 1  
Taxpayer D, Taxpayer A's daughter, Percentage 2  
Taxpayer E, Taxpayer A's granddaughter, Percentage 1.

Taxpayer B is older than either Taxpayer C, Taxpayer D, or Taxpayer E. Taxpayers B, C, D, and E were alive as of the date of Taxpayer A's death, and remain alive as of the date of this ruling request.

In relevant part, Article Sixteen, Section 16, of Trust T gives Trustee W, as independent trustee of Trust T, the right to amend, restate and modify the terms of any trust created under the Trust in order to qualify the trust as a designated beneficiary under Internal Revenue Code section 401(a) and the final regulations promulgated thereunder.

Article Sixteen, Section 15, of Trust T governs distributions for retirement assets, including IRA X, payable to Trust T including those assets payable to Subtrust B.

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On Date 6, 2005, pursuant to the authority granted him by Taxpayer A in Article Sixteen, Section 16, of Trust T, Trustee W, as independent trustee of Trust T, amended various sections of Trust T retroactively effective to Date 2, 2004, the date of Taxpayer A's death. As amended, Article Five, Section 2.b. of Trust T, reads:

"Notwithstanding anything herein to the contrary, I direct that such retirement plan benefits may not be used or applied on or after September 30 of the year following my death for payment of my debts, taxes, expenses of administration or other claims of my estate; nor for payment of estate, inheritance or similar transfer tax due at my death".

As amended, Article Eighteen, Section 1.i of Trust T reads as follows;

"For purposes of this agreement, the term "retirement plan" or qualified retirement plan" shall include, without limitation, a qualified pension plan, profit sharing plan, 401(k), Keogh, individual retirement account (including a SEP, deductible, nondeductible, Education and Roth IRA), or any other retirement plan.

As amended, Article Sixteen, Section 15, of Trust T reads as follows:

" Notwithstanding anything to the contrary and in addition to any dispositive provisions of any trust created under this agreement, with regard to any qualified retirement plan that is payable to any trust under this agreement, beginning in the year following my death, my Trustee shall withdraw from such qualified retirement plan the minimum required distribution as defined under section 401(a)(9) of the code and the proposed and final regulations promulgated thereunder. Additionally, the Trustee may withdraw from any Retirement Asset payable to the Trust, so much of net income and corpus as the Trustee shall determine to be necessary or advisable for the benefit of a beneficiary as the Trustee shall determine to be necessary for such beneficiary's health, education, maintenance or support in such beneficiary's accustomed manner of living. Notwithstanding anything to the contrary, any and all amounts withdrawn from any Retirement Asset payable to this Trust shall be distributed to the beneficiary of such trust, not less frequently than annually, free of Trust.

The intent of this section is to the extent necessary to qualify any trust under this agreement as a designated beneficiary under Section 401(a)(9) of the code and the proposed and final regulations promulgated thereunder, any Trust receiving a required minimum distribution from a qualified retirement plan shall be considered a conduit trust".

It has been represented on your behalf that distributions from IRA X (now IRA Y) intended to comply with the requirements of Code section 401(a)(9) will commence no later than December 31, 2005 and will be based on the life expectancy of Taxpayer B.

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

1. That Trust T, as amended, is a qualified "See-Through Trust" within the meaning of section 1.401(a)(9)-4 of the "Final" Income Tax Regulations, Question and Answer-5;
2. that Code section 401(a)(9) minimum required distributions from IRA X (now IRA Y) may be calculated based upon the life expectancy of Taxpayer B, the oldest possible beneficiary, using the Single Life Table found in the "Final" regulations;
3. that the Transfer of IRA X maintained with Company A to IRA Y maintained with Company B, by means of a trustee-to-trustee transfer, did not constitute a distribution within the meaning of Code section 408(d)(1) and also did not constitute a rollover within the meaning of Code section 408(d)(3).

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.

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)(ii) provides, in general, that if a plan participant (IRA holder) dies before the distribution of his interest has begun in accordance with subparagraph (A)(ii) (prior to his required beginning date), then his entire interest must be distributed within 5 years of his death.

Code section 401(a)(9)(B)(iii) provides an exception to the 5-year rule (above). In general, pursuant to the exception, if any portion of the interest of a deceased plan participant (IRA holder) 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

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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).

Code section 401(a)(9)(E) defines "designated beneficiary" as any individual designated as a beneficiary by the employee (IRA holder).

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.

With further 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[.]

In addition, the "Final" Regulations have been modified in part (See 2004-26 I.R.B. 1082, 1098 (June 28, 2004)). The modification to the "Final" Regulations may also be relied upon with respect to required distributions for the 2003 and subsequent calendar years.

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 section 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. This rule also applies if another individual is a designated beneficiary in addition to the employee's (IRA holder's) surviving spouse.

Section 1.401(a)(9)-3 of the "Final" regulations, Q&A-4(a), provides, in relevant part, that in the absence of a plan provision to the contrary, with respect to an individual who dies prior to reaching his required beginning date, if said individual has designated a beneficiary, distributions from his plan or IRA are to be made in accordance with the life expectancy rule of Code sections 401(a)(9)(B)(iii) and (iv).

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 section 401(a)(9)(B)(iii) or (iv) and the life expectancy rule described in A-1 of section 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

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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-1, provides, in relevant part, that a designated beneficiary is an individual who is designated as a beneficiary under a plan either by the terms of the plan or by an affirmative election by the employee. A beneficiary designated under the plan is an individual who is entitled to a portion of an employee's benefit contingent on the employee's death or another specified event. A designated beneficiary need not be specified by name in the plan or by the employee to the plan in order to be a designated beneficiary so long as the individual who is to be the beneficiary is identifiable under the plan. Q&A-1 further provides that a person who takes under a will or otherwise under applicable state law will not be a designated beneficiary unless that individual also takes under a plan.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-7(a) provides, in summary, 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 for determining the designated beneficiary, the named 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-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 death, but is not a beneficiary as of that September 30 (e.g. because the person receives the entire benefit to which the person 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 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 section 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)-5 of the "Final" regulations, Q&A-7(b) provides, in short, that except as provided in paragraph (c)(1) of this A-7, if a beneficiary's entitled to an employee's benefit after the employee's death is a contingent right, such contingent beneficiary is nevertheless considered to be a beneficiary for purposes of determining who, if anyone, is the employee's designated beneficiary.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-7(c) provides, in relevant part, that a person who has any right (including a contingent right) to an employee's benefit beyond being a mere potential successor in the interest of one of the employee's beneficiaries upon that

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beneficiaries death, must be considered for purposes of determining who, if anyone, is the employee's designated beneficiary. Q&A-7(c) provides an example pursuant to which a principal remainderman of an income beneficiary of an employee's interest must be considered for purposes of determining who, if anyone, is 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)-4 of the "Final" Regulations, Q&A-6(b), provides in relevant summary, that, at a minimum, documentation sufficient to enable an IRA custodian to identify beneficiaries of an IRA must be provided by a trustee to the custodian by October 31 of the calendar year immediately following the calendar year in which the IRA owner died.

Section 1.401(a)(9)-9 of the "Final" Regulations, Q&A-1, sets forth the "Single Life Table" to be used to determine the life expectancy of an individual. The "Single Life Table" indicates that the life expectancy of a 67-year old is 19.4 years.

Code section 408(a) provides the rules governing IRAs. Code section 408(d)(1) 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.

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. .

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



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beneficiary accomplishing such a post-death trustee to trustee need not be the surviving spouse of a deceased IRA holder.

With specific reference to your first ruling request, it has been represented that Trust T, and the sub-trusts created under its terms, are valid under the laws of State U and became irrevocable at the death of Taxpayer A. Furthermore, it has been represented that a copy of the documentation required under the "Final" Regulations promulgated under Code section 401(a)(9) was timely given to the administrator(s) of IRA X (now IRA Y). Finally, the identities of the beneficiaries of Trust T may be determined by perusing its terms.

Thus, in response to your initial ruling request, we conclude as follows:

1. That Trust T, as amended, is a qualified "See-Through Trust" within the meaning of section 1.401(a)(9)-4 of the "Final" Income Tax Regulations, Question and Answer-5.

With respect to your second and third ruling requests, since Trust T, and its sub-trusts, constitute a valid "See-Through Trust", it is necessary to determine who, if anyone, is the designated beneficiary, within the meaning of Code sections 401(a)(9) and 408(a)(6), of Taxpayer A's IRA X (now IRA Y). In this regard, we note that IRA X was allocated to Subtrust B pursuant to Taxpayer A's Date 5, 2003 beneficiary designation, and that Trustee W, Trust T's trustee, did not have the discretion to allocate IRA X (now IRA Y) to Subtrust A. In short, it has been represented, and documentation attached to this ruling request support the representation, that the allocation of IRA X (now IRA Y) to Subtrust B was required pursuant to the direction of Taxpayer A.

As noted above, Taxpayers B, C, D and E are beneficiaries of Subtrust B. As amended and modified, the terms of Trust T and Subtrust B require that all distributions made from IRA X (now IRA Y) during a calendar year be paid to the appropriate distributee/payee during said calendar year. Said requirement precludes the accumulation of any portion of said distributed amounts for the benefit of other Subtrust B beneficiaries after the end of the year with respect to which said distribution was made. As a result, Taxpayers B, C, D, and E are the only beneficiaries who will receive the distributed amounts and the only beneficiaries who must be considered for purposes of determining who is the designated beneficiary, within the meaning of Code section 401(a)(9), of IRA X (now IRA Y). As noted previously, Taxpayer B is older than either Taxpayer C, Taxpayer D, or Taxpayer E.

Thus, with respect to your second ruling request, based on the above, we conclude as follows:

2. that Code section 401(a)(9) minimum required distributions from IRA X (now IRA Y) may be calculated based upon the life expectancy of Taxpayer B, the eldest of Taxpayers B, C, D, and E using the Single Life Table found at section 1.401(a)(9)-9 of the "Final" regulations..

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With respect to your third letter ruling request, as noted above, during Month 1, 2005, IRA X was transferred, by means of a trustee-to-trustee transfer, to IRA Y. Code section 408(d)(3)(C) provides, generally, that amounts from an "inherited" IRA cannot be rolled over into another IRA. However, as noted above, Rev. Rul. 78-406, 1978-2 C.B. 157, by its terms, 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 distribution to a participant, payee or distributee as those terms are used in Code section 408(d). Additionally, 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.

In this case, the ruling submission, and attached documentation, support the assertion that the Month 1, 2005, transaction was a trustee-to-trustee transfer.

Thus, with respect to your third ruling request, we conclude as follows:

3. that the Transfer of IRA X maintained with Company A to IRA Y maintained with Company B, by means of a trustee-to-trustee transfer, did not constitute a distribution within the meaning of Code section 408(d)(1) and also did not constitute a rollover within the meaning of Code section 408(d)(3).

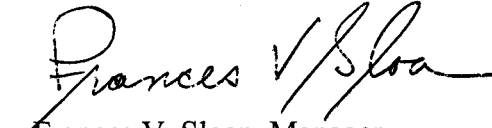
This ruling letter is based on the assumption that IRA X (now IRA Y) meets the requirements of Code section 408(a) at all times relevant thereto. Furthermore, this ruling letter rests on the assumption that Trust T, and its related sub-trusts, are valid under the laws of State U as represented. It also assumes the correctness of all facts and representations contained therein.

A copy of this letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

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If you have any questions concerning this letter ruling, please contact  
Esquire (ID: ) who may be reached at (not a toll-free number) or  
(FAX).

Sincerely yours,

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

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