Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Contact Person:

Telephone Number:

In Reference to:

Date:

T:EP:RA:T3 ID:50-03192

MAY 8 2001

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Taxpayer D:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Date 8:

Trust X:

IRA Y:

Company Z:

Subtrust A:

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State B:

Dear Ms. :

This is in response to the , letter submitted by your authorized representative on your behalf in which you request a series of letter rulings under section 401(a)(9) of the Internal Revenue Code. The following facts and representations support your ruling requests.

Taxpayer A maintained IRA Y, an individual retirement arrangement which your authorized representative asserts was qualified within the meaning of Code section 408(a), with Company Z. Taxpayer A's date of birth was Date 1, 1927; thus, he attained age 70 ½ on Date 8, 1998. As a result, his Code section 401(a)(9) "required beginning date" was April 1, 1999.

Taxpayer A was married to Taxpayer B. However, Taxpayer B died on Date 5, 1995.

On Date 3, 1991, Taxpayer A created Trust X. On or about Date 2, 1996, Taxpayer A named Trust X as the beneficiary of his IRA Y. Taxpayer A did not change his IRA Y beneficiary designation prior to his death.

On or about Date 2, 1996, Taxpayer A named Trust X as the beneficiary of his IRA Y. Taxpayer A did not change his IRA Y beneficiary designation prior to his death.

Taxpayer A died on Date 4, 1999, which was after his Code section 401(a)(9) required beginning date. At the time of his death, Taxpayer A was receiving required distributions from his IRA Y over his recalculated single life expectancy. Your authorized representative asserts, on your behalf, that within two weeks of the date of Taxpayer A's death, the trustee of Trust X served a copy of the Trust X document on Company Z.

Taxpayer A was survived by his two children, Taxpayers C and D. Taxpayer C's date of birth was Date 6, 1968, and Taxpayer D's date of birth was Date 7, 1960. Thus, Taxpayer D is older than Taxpayer C.

The primary beneficiary of Taxpayer A's Trust X was Taxpayer B. However, as noted above, Taxpayer B predeceased Taxpayer A. Furthermore, Taxpayer B died prior to Taxpayer A's Code section 401(a)(9) required beginning date.

According to the terms of Trust X, in the event that Taxpayer B did not survive Taxpayer A, the assets of Trust X are payable in equal shares to the children of Taxpayer A who are living at the time of Taxpayer A's death.

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Paragraph Second (f) of Trust X provides, in relevant part, that if the settlor's spouse does not survive the settlor, the balance of the trust estate described in paragraph Second (c) shall be transferred to Subtrust A of Trust X and held, administered and disposed of in accordance with the provisions of paragraph Fourth of Trust X.

Pursuant to the above, the proceeds of IRA Y, payable to Trust X, were transferred to Subtrust A.

Paragraph Fourth (c) of Trust X provides, in pertinent part, that upon the death of the settlor and the settlor's spouse, Subtrust A shall terminate and the trustee of Trust X shall divide the remaining principal and income of Subtrust A into equal shares, one share for each child of the settlor then surviving. Each such share shall forthwith be paid over to such child free and discharged from the trusts hereof.

Paragraph Ninth of Trust X provides, in pertinent part, that Taxpayer A had the sole power to revoke Trust X.

At the time of his death, Taxpayer A was a resident of State B. State B Consolidated Laws section 600.6023 provides, in pertinent part, that an individual retirement account or individual retirement annuity defined in section 408 or 408(A) of the Internal Revenue Code of 1986 and the payments or distributions from such account or annuity, shall be exempt from levy and sale under any execution. Your authorized representative has asserted that, pursuant to this section of the State B statutes, IRAs are exempt from creditors.

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

(1) That Taxpayer A timely designated Taxpayer D as a beneficiary of his IRA Y;

(2) That Taxpayer A timely designated Taxpayer C as a beneficiary of his IRA Y;

(3) that, with respect to IRA Y, in determining Code section 401(a)(9) minimum required distributions commencing in the calendar year following the calendar year of Taxpayer A's death (2000), Taxpayer D may use the remaining term-certain life expectancy of Taxpayer D since she is the elder of Taxpayers C and D reduced by one for each calendar year thereafter;

(4) that, with respect to IRA Y, Taxpayer A's use of his single life expectancy, recalculated, to determine minimum required distributions during his

lifetime does not preclude the use of the remaining term-certain life expectancy of Taxpayer D, the older of Taxpayers C and D, reduced by one for each calendar year, for purposes of computing minimum required distributions for calendar years commencing with calendar year 2000;

(5) that Taxpayer D, as a beneficiary of Trust X, the beneficiary of IRA Y, may direct that her portion of the Trust X assets which consists of her interest in IRA Y be transferred, by means of a trustee-to-trustee transfer, into another IRA set up and maintained in the name of Taxpayer A for the benefit of Taxpayer D, beneficiary thereof;

(6) that Trust X's being the named beneficiary of Taxpayer A's IRA Y at the death of Taxpayer A does not preclude the Service's issuing favorable responses to letter ruling requests (1) through (5), above; and

(7) that Trust X's being the named beneficiary of Taxpayer A's IRA Y at the death of Taxpayer A does not preclude minimum required distributions from IRA Y, or a transferee IRA thereof set up in the name of Taxpayer a for the benefit of Taxpayer D, being made directly to Taxpayer D after Trust X is terminated over Taxpayer D's life expectancy.

With respect to your ruling requests, section 408(a)(6) of the Code 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 the 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 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 employee (IRA holder) attains age 70 ½.

Code section 401(a)(9)(B)(I) provides that, where distributions have begun over life expectancy (cies) in accordance with subparagraph (A)(ii), a trust shall not constitute a qualified trust under this section unless the plan provides that, if the employee dies before his entire interest has been distributed to him, the remaining portion of such interest will be distributed at least as rapidly as under the method of distribution being used under subparagraph (A)(ii) as of the date of death.

Section 401(a)(9)-1 of the Proposed Income Tax Regulations, Question and Answer D-3, provided that for purposes of calculating the distribution period for distributions that begin prior to death, the designated beneficiary will be determined as of the plan participant's (IRA holder's) required beginning date.

Section 401(a)(9)-1 of the proposed regulations, Q&A E-5(a), provided, in general, that if more than one individual is designated as a beneficiary with respect to an employee (IRA holder) 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 Code section 401(a)(9) distribution period.

Section 401(a)(9)-1 of the proposed regulations, Q&A F-1(a), provided that where an employee's benefit is in the form of an individual account and is to be distributed over a period not extending beyond the life expectancy of the employee or the joint life and last survivor expectancy of the employee and his designated beneficiary, the amount required to be distributed for each calendar year, beginning with the first calendar year for which distributions are required and for each succeeding calendar year, must be at least equal to the quotient obtained by dividing the employee's benefit by the applicable life expectancy.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A F-1(d), provided that the term "applicable life expectancy" means the life expectancy (or the joint and last survivor expectancy) determined in accordance with E-1 through E-5 of the proposed regulations, reduced by one for each calendar year which has elapsed since the date on which the life expectancy (or joint and last survivor expectancy) was calculated. However, pursuant to E-6 through E-8, life expectancy is recalculated, the applicable life expectancy will be the life expectancy so recalculated.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A E-6, provided, in general, that the life expectancy of a designated beneficiary may be recalculated if the designated beneficiary is the IRA holder's spouse.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A F-3A, provided, generally, that, with respect to individual account plans from which distributions have

commenced prior to the employee's death, post death distributions will comply with the "at least as rapidly as under the method of distribution being used under section 401(a)(9)(A)(ii) rule" if said distributions are made in accordance with Q&A F-1.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A E-8 provided, in pertinent part, that the life expectancy of a non-spouse beneficiary may not be recalculated. Q&A E-8 also provides, in pertinent part, that if the life expectancy of either a plan participant (IRA holder) or his beneficiary is being recalculated, the recalculated life expectancy is reduced to "0" at the end of the calendar year following the calendar year of the IRA holder's or beneficiary's death.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A D-2A, provided 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 provided 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 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, provided 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 provided, 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. In general, with respect to

required distributions which commence after death, the necessary documentation must be furnished no later than the end of the ninth month beginning after the death of the employee (IRA holder).

With respect to your first and second ruling requests, in this case, Taxpayer A, prior to his Code section 401(a)(9) required beginning date, named his Trust X as the beneficiary of his IRA, IRA Y. As noted above, Taxpayer A did not change his beneficiary designations prior to his death.

The facts of this case, summarized above, indicate that Trust X is a valid trust which became irrevocable at the death of Taxpayer A. Furthermore, Taxpayers C and D were referenced in Trust X as the beneficiaries thereof to take if Taxpayer B did not survive Taxpayer A. Taxpayer B, who died prior to Taxpayer A's Code section 401(a)(9) required beginning date, did not survive Taxpayer A. Finally, a copy of Trust X has been given to Company Z, the custodian of Taxpayer A's IRA Y.

Based on the above, the Service has concluded that Trust X is a "see-through" trust described in section 1.401(a)(9)-1 of the proposed regulations, Qs&As D-5 and D-6 (above). As a result, with respect to your first two ruling requests, the Service concludes as follows:

(1) That Taxpayer A timely designated Taxpayer D as a beneficiary of his IRA Y; and

(2) That Taxpayer A timely designated Taxpayer C as a beneficiary of his IRA Y.

With respect to your third ruling request, as noted above, Taxpayer D is older than Taxpayer C. Furthermore, Taxpayers C and D are the children of Taxpayer A. Thus, the life expectancy of Taxpayer D may not be recalculated for purposes of determining the Code section 401(a)(9) distribution period after the death of Taxpayer A.

Thus, with respect to your third ruling request, the Service concludes as follows

(3) that, with respect to IRA Y, in determining Code section 401(a)(9) minimum required distributions commencing in the calendar year following the calendar year of Taxpayer A's death (2000), Taxpayer D may use the remaining term-certain life expectancy of Taxpayer D since she is the elder of Taxpayers C and D reduced by one for each calendar year thereafter.

With respect to your fourth ruling request, the issue presented is whether post death distributions from Taxpayer A's IRA Y may be made over Taxpayer D's life expectancy although distributions from IRA Y during Taxpayer A's life were made over

Taxpayer A's recalculated single life expectancy (and not over Taxpayer A's and Taxpayer D's joint life expectancy) without violating the "at least as rapidly" rule of Code section 401(a)(9)(B)(i) as described in section 1.401(a)(9)-1 of the proposed regulations, Q&A F-3A.

In this case, as noted above, Taxpayer A timely designated Taxpayer D as his beneficiary for purposes of Code section 401(a)(9). Thus, Taxpayer A could have received distributions from IRA Y over his and Taxpayer D's joint life expectancy subject to the minimum distribution incidental benefit requirement. Such distributions would have complied with the minimum required distribution rules. Instead, Taxpayer A chose to receive distributions over his recalculated single life expectancy. In effect, Taxpayer A received distributions in amounts greater than the required minimums, or, in other words, chose to accelerate receipt of lifetime distributions.

Taxpayer A's election to accelerate distributions does not affect the determination, above, that Taxpayer A's timely designating Taxpayer D as his beneficiary resulted in Code section 401(a)(9) required distributions being those computed using Taxpayer A's and Taxpayer D's joint and survivor life expectancy. Thus, although Taxpayer D's life expectancy was not used in computing lifetime distributions to Taxpayer A, it may be used to determine post-death required distributions to Taxpayer A's beneficiaries. In short, the "at least as rapidly rule" will not be violated if post-death distributions are calculated using the life expectancy of Taxpayer A's designated beneficiary, Taxpayer D, since Taxpayer A could have used Taxpayer D's life expectancy to determine the amount of his required lifetime distributions.

In this case, as noted above, Taxpayer A's life expectancy was being recalculated. Thus, as of the end of 2000, the calendar year following the calendar year of his death, Taxpayer A's life expectancy will be reduced to "0". Therefore, required distributions to Taxpayer A's beneficiaries will be those computed using the life expectancy of Taxpayer D, his designated beneficiary.

Thus, with respect to your fourth ruling request, the Service concludes as follows:

(4) that, with respect to IRA Y, Taxpayer A's use of his single life expectancy, recalculated, to determine minimum required distributions during his lifetime does not preclude the use of the remaining term-certain life expectancy of Taxpayer D, the older of Taxpayers C and D, reduced by one for each calendar year, for purposes of computing minimum required distributions for calendar years commencing with calendar year 2000.

With respect to your fifth ruling request, 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 treated as paid or distributed to the participant

and such transfer is not a rollover contribution. The revenue ruling states that this conclusion would apply whether the bank trustee initiates or the IRA participant directs the transfer of funds.

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.

With specific reference to your seventh ruling request, as noted above, Taxpayer A named Trust X as the beneficiary of his IRA Y. And, as noted above, Taxpayers C and D are the named beneficiaries of Trust X and not of IRA Y although Taxpayer D, as the older of Taxpayers C and D, is the Code section 401(a)(9) designated beneficiary of IRA Y.

The facts, summarized above, indicate that, after the deaths of Taxpayers A and B, Trust X is to be terminated and payments of assets otherwise payable to Trust X will be made directly to the beneficiaries of Trust X, Taxpayers C and D. This Trust X termination language is found in the provisions of Trust X and reflects Taxpayer A's intent.

The provision of Trust X which provides for its termination does not change either the identity of the individuals who will receive the IRA Y proceeds or the identity of the designated beneficiary of IRA Y who remains Taxpayer D. Furthermore, the Trust X termination language which results in distributions from IRA Y being made directly to Taxpayers C and D instead of initially to Trust X and then to Taxpayers C and D was language in Trust X approved by Taxpayer A during his lifetime which reflects Taxpayer A's intent to pay his children directly instead of through Trust X. Thus, it does not give rise to a change in beneficiaries prohibited by section 1.401(a)(9)-1 of the proposed regulations, Q&A E-5(f).

Thus, with respect to your fifth through seventh ruling requests, the Service concludes as follows:

(5) that Taxpayer D, as a beneficiary of Trust X, the beneficiary of IRA Y, may direct that her portion of the Trust X assets which consists of her interest in IRA Y be transferred, by means of a trustee-to-trustee transfer, into another IRA set up and maintained in the name of Taxpayer A for the benefit of Taxpayer D, beneficiary thereof;

(6) that Trust X's being the named beneficiary of Taxpayer A's IRA Y at the death of Taxpayer A does not preclude the Service's issuing favorable responses to letter ruling requests (1) through (5), above; and

(7) that Trust X's being the named beneficiary of Taxpayer A's IRA Y at the death of Taxpayer A does not preclude minimum required distributions from IRA Y, or a transferee IRA thereof set up in the name of Taxpayer A for the benefit of Taxpayer D, being made directly to Taxpayer D after Trust X is terminated over Taxpayer D's life expectancy.

This ruling letter assumes that IRA Y either is, has, or will meet the requirements of Code section 408 at all times relevant thereto. It also assumes that the transferee IRA which will be set up and maintained in the name of Taxpayer A for the benefit of Taxpayer C will also meet the requirements of Code section 408. Finally, it assumes that Trust X is valid under the laws of State B as asserted.

This ruling is directed solely to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

Pursuant to a power of attorney on file in this office, 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 ruling
Form 437