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

200211049

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 401.29-02

T:EP:RA:T1

DEC 17 2001

Legend:

Taxpayer A =

Taxpayer B =

Taxpayer C =

IRA X =

IRA Y =

Plan V: =

Plan W: =

Dear :

This is in response to a ruling request dated November 8, 2000, as supplemented by additional correspondence dated December 6, 2001, from your authorized representative concerning sections 401(a)(9) and 408(a) of the Internal Revenue Code ("Code").

214

The following facts and representations have been submitted:

Taxpayers A and B, who married on November 4, 1956, were divorced on June 30, 1999. As a result of the divorce, Taxpayer A received a distribution from Taxpayer B's IRA X pursuant to a written property settlement. Also in 1999, Taxpayer A received additional funds from Taxpayer B's Code section 401(a) qualified retirement plans, Plans V and W, pursuant to an order which your authorized representative asserts was a qualified domestic relations order (QDRO) and the terms of which indicate was intended to be a QDRO. All sums distributed to Taxpayer A were rolled over to Taxpayer A's IRA Y. Taxpayer A named Taxpayer C, her daughter, as sole beneficiary of her IRA Y.

Taxpayer B was born on June 6, 1933. He is currently age 68 and still living. Taxpayer A was born April 5, 1924 and died January 12, 2000. Taxpayer C was born May 12, 1947 and is currently age 54.

When Taxpayer A established IRA Y, she was 75 years old. Prior to this time, Taxpayer A did not have an individual retirement arrangement ("IRA") under section 408 of the Internal Revenue Code ("Code"). Taxpayer A did take some distributions from IRA Y during 1999. However, Taxpayer A did not make any elections regarding whether to recalculate her life expectancy for purposes of calculating her minimum required distributions from her IRA Y. Therefore, pursuant to the terms of the IRA Y document, in the absence of an election, annual recalculation of Taxpayer A's life expectancy was required.

Taxpayer C intends to begin receiving required distributions as a beneficiary of IRA Y no later than December 31, 2001.

Based on the foregoing facts and representations, you have requested the following rulings:

1) That Taxpayer C may receive distributions from IRA Y based on her life expectancy; and

2) That Taxpayer C must begin to receive distributions from IRA Y no later than December 31, 2001.

With respect to your ruling requests, Code section Code section 408(a)(6) provides, in short, that the transfer of an individual's interest in an individual retirement account or an individual retirement annuity to his spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2) is not to be considered a taxable transfer, and such interest at the time of the transfer is to be treated as an individual retirement account of such spouse and not of such individual.

Code section 71(b)(2)(A) provides that a divorce or separation instrument means a decree of divorce or separate maintenance or a written instrument incident to such a decree.

215

Code section 402(c), in summary, sets down the rules applicable to rollovers of amounts distributed from plans qualified under Code section 401(a).

Section 1.402(c)-2 of the Income Tax Regulations, Question and Answer-12(a) provides, in relevant part, that the rollover rules of Code section 402(c) apply to the spouse or former spouse of an employee/plan participant who receives a distribution as an alternate payee pursuant to a domestic relations order defined in Code section 414(p) except that with respect to said spouse or former spouse a qualified retirement plan described in Code section 401(a) shall not be treated as an "eligible retirement plan".

408(a)(6) states that under regulations prescribed by the Secretary, rules similar to the rules of Code 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 is maintained. Similarly, section 1.408-8 of the "Old" Proposed Income Tax Regulations, Question and Answer 1, states that IRAs are subject to the distribution rules provided in Code section 401(a)(9) and section 1.401(a)(9)-1 of the proposed regulations for qualified plans.

Code section 401(a)(9) 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 section 401(a)(9)(C) provides, in relevant part, that, for purposes of this paragraph, the term "reguired 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 expectancies 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 1.401(a)(9)-1 of the proposed regulations, Q&A D-3, provides 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 1.401(a)(9)-1 of the proposed regulations, Q&A F-1(a), provides 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 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), provides that the term "applicable life expectancy" means the life expectancy (or the joint life 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 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-1, provides, in pertinent part, for required distributions under Code section 401(a)(9)(A), (pre-death commencement), life expectancies are calculated using the employee's birthday (and the designated beneficiary's birthday) in the calendar year in which the employee attained age 70 & ½.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A E-6, provides, 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, provides in general, 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 the Code section 401(a)(9) 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, provides, 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 C-1, provides in the case in which an employee dies before distributions are treated as having begun to an employee in accordance with section 401(a)(9)(A)(ii), section 401(a)(9)(B) provides two methods for distributing the employee's interest. In order to satisfy section 401(a)(9), distributions must be made under one of these two methods. The first method (the five-year rule) in section 401(a)(9)(B)(ii) requires that the entire interest of the employee be distributed within 5 years of the employee's death regardless of to whom or to what entity the distribution is made. The second method (the exception to the five-year rule in section 401(a)(9)(B)(iii)) requires that any portion of an employee's interest which is payable to (or for the benefit of) a designated beneficiary be distributed, commencing within one

year of the employee's death, over the life of such beneficiary (or over a period not extending beyond the life expectancy of such beneficiary).

Section 1.401(a)(9)-1 of the proposed regulations, Q&A D-4, provides, in short, that in order to satisfy the exception to the 5-year rule (above), an employee's designated beneficiary will be determined as of the employee's date of death.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A F-5, provides in the case of an individual account, the benefit used in determining the minimum distribution for a distribution calendar year is the account balance as of the last valuation date in the calendar year immediately preceding any distribution calendar year.

Section 1.408-8 of the proposed regulations, Q&A-5, provides, in short, that the amount of a required distribution from an IRA will be computed with regard to the account balance of the IRA as of the preceding December 31.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A E-2, provides in the case of any distribution under section 401(a)(9)(B)(iii) and (iv), the life expectancy of any designated beneficiary is calculated based on the beneficiary's attained age as of the beneficiary's birthday in the calendar year in which distributions are required to commence to such beneficiary in order to satisfy section 401(a)(9)(B)(iii) and (iv).

In this case, Taxpayer A timely designated Taxpayer C as her beneficiary for purposes of Code section 401(a)(9). Taxpayer A did not make any elections with respect to whether her life expectancy would be recalculated for purposes of calculating required distributions. Thus, pursuant to the language of the IRA Y document, Taxpayer A's life expectancy was being recalculated for purposes of calculating minimum required distributions from said IRA Y.

In this case, Taxpayer A did not have an established IRA account until 1999. Thus, for purposes of calculating required distributions from her IRA Y, the first account balance to be used would have been the account balance as of December 31, 1999. As a result, Taxpayer A would have had to receive distributions from IRA Y beginning no later than December 31, 2000. However, as noted above, Taxpayer A died prior to that date.

Taxpayer A's life expectancy was being recalculated. Thus, for purposes of Code section 401(a)(9), it is reduced to "0" as of December 31, 2001. However, Taxpayer A timely designated Taxpayer C as the beneficiary of her IRA Y. Taxpayer C attained age 54 during 2001.

Therefore, based on the foregoing, we conclude:

1) Taxpayer C may receive distributions from IRA Y based on her life expectancy; and

2) Taxpayer C must begin to receive distributions from IRA Y no later than December 31, 2001.

This ruling is based on the assumption that both IRA X and Taxpayer B's IRA Y either have met or will meet the requirements of Code section 408 at all times relevant thereto. It also assumes that Plans V and W met the requirements of Code section 401(a) at all times relevant thereto. Finally, it assumes that the court order pursuant to which distributions were made to Taxpayer A from Plans V and W constituted a QDRO, as that term is defined in Code section 414(p), as represented.

This ruling does not address any issues raised under the "Revised" Proposed Regulations issued under Code sections 401(a)(9) and 408(a)(6) which were published in the Internal Revenue Bulletin at 2001-11 I.R.B. 865 (March 12, 2001).

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

Copies of this ruling have been sent to your authorized representatives pursuant to a power of attorney on file in this office.

Should you have any questions concerning this letter ruling, please contact T:EP:RA:T1 (ID#), of my staff at .

Sincerely yours,

Manager, Employee Plans
Technical Group 1
Tax Exempt and Government
Entities Division

Enclosures:
Deleted Copy of the Ruling
Notice 437

cc:

219