Sig. INDEX # 401.06-00

200252097

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

T:EP:RA:T2

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SEP 30 2002

Legend:

Taxpayer A: xxxxx

Trust X: xxxxx

Trustee M: xxxxx

Taxpayer B: xxxxx

IRA Z: xxxxx

Taxpayer C: xxxxx

Taxpayer D: xxxxx

Dear xxxxxx:

This is in response to the request dated xxxxx , 2001, as supplemented by correspondence dated xxxxx, 2001, and as amended by correspondence dated xxxxx , 2001, and xxxxx, 2002, submitted, by your bank in its capacity as a trustee, for a private letter ruling regarding the minimum distribution rules under section 401(a)(9) of the Internal Revenue Code.

Facts and representations in support of this ruling request are as follows:

On February 9, when Taxpayer A died, he was the grantor of Trust X and the father of Taxpayer C. Taxpayer A created and funded Trust X on

August 28, Trustee M, in accordance with Article 2 of the Trust X document, holds, administers and distributes Trust X.

Trust X was created by Taxpayer A for the benefit of Taxpayer C. Article 4, section B(1)(a) of the Trust X document provides that Taxpayer C is the exclusive income beneficiary of Trust X and has a lifetime interest as such. Article 3 sets out the nature and delineation of the trust property subject to Taxpayer C's income withdrawal right.

Trust X is divided into two subtrusts, Fund A and Fund B. Article 3 sets out the method for determining which trust property will be held in each Fund. It is represented that the annual distribution from IRA Z will be paid into Fund A and, in turn, Fund A will remit the distribution to Taxpayer C.

Article 4, section B(2) of Trust X explains what happens to Fund A and Fund B when Taxpayer C dies. The first part of section B(2) provides that Fund A shall be distributed to Taxpayer C's children, if any, who are living on the date of Taxpayer C's death, otherwise to the heirs of Taxpayer A who are living on the date of Taxpayer C's death. The second part of section B(2) provides that Fund B is for the benefit of Taxpayer C's issue as she may appoint by her last will and testament. If Taxpayer C fails to exercise her power of appointment, then upon the death of Taxpayer C, all of Fund B is to be distributed in accordance with the method for distributing Fund A. (Taxpayer C does not have any children at this time.)

Thus, under the terms of Trust X, it is provided that upon the death of Taxpayer C, should she die childless, the assets of Trust X are to benefit the children of Taxpayer A who survive Taxpayer C.

On February 9, when Taxpayer A died, he was the owner of an individual retirement arrangement (IRA). Upon the death of Taxpayer A, his surviving spouse became entitled to the death benefit proceeds from his IRA.

Taxpayer B, now deceased, was the surviving spouse of Taxpayer A and the mother of Taxpayer C. On September 15, Taxpayer B, pursuant to section 408(d)(3)(ii) of the Code, had the death benefits from Taxpayer A's IRA transferred directly into IRA Z which she established in her own name for the sole purpose of receiving such death benefits. Also, on September 15, Taxpayer B designated the beneficiary of IRA Z. Under the beneficiary designation section of the IRA Z application document, Taxpayer B named as beneficiary: the trustee of Trust X "for the benefit of" Taxpayer C. No other beneficiary, primary or contingent, was designated on the IRA Z application document.

Taxpayer B was born on May 19, In at age 70, Taxpayer B began receiving required minimum distributions from IRA Z pursuant to section 401(a)(9) of the Code. Taxpayer B's "required beginning date," as that term is used in section 401(a)(9)(C) of the Code, was April 1, Minimum distributions were made from IRA Z to Taxpayer B in and The single life recalculation method using the life expectancy of Taxpayer B was used to determine the amount of the distribution required yearly from IRA Z.

Taxpayer B died on September 30, The minimum distribution from IRA Z for the calendar year was reported on the final Federal income tax return of Taxpayer B.

The minimum distribution from IRA Z for the calendar year was calculated using the remaining life expectancy of Taxpayer B as of the date of her death. Taxpayer B's remaining life expectancy on September 30, pursuant to the expected return multiples in Table V of section 1.72-9 of the Income Tax Regulations for ordinary life annuities (for one life) was 12.5 years. The IRA Z distribution for the calendar year was in the amount of $

Trust X has remained the sole named beneficiary of IRA Z since the date IRA Z was established. On the date Taxpayer B died, children of Taxpayer A were alive and remain so. Of the Taxpayer D, born May 7, is the eldest and Taxpayer C, born May 24, is the youngest.

Pending the outcome of this ruling request, a minimum distribution from IRA Z for the distribution year was made as required by section 401(a)(9) of the Code. The minimum distribution in the amount of $ was made on December 24, The minimum distribution from IRA Z was calculated by referring to the January 1, , market value of IRA Z, which is represented as being $ In addition, the minimum distribution from IRA Z was based on the applicable life expectancy of Taxpayer D who is the oldest in age of the potential beneficiaries of the principal of Trust X. Specifically, the factor of 34.9 was derived from the expected return multiples in Table V of section 1.72-9 of the regulations by determining the age of Taxpayer D on September 30, the date of death of Taxpayer B. This initial factor was then reduced by 2.0 to calculate the minimum distribution for the calendar year.

In keeping with the purpose of Trust X to provide a benefit for Taxpayer C for the rest of her life, it is the goal of Trustee M to correlate the period of time over which the assets of IRA Z are to be distributed with the life expectancy of Taxpayer C. Thus, Trustee M proposes that IRA Z remain in existence as the IRA of Taxpayer B (and benefit from any earnings) and that yearly minimum distributions required under section 401(a)(9) of the Code and section 1.401(a)(9)-1 of the old regulations continue to be paid from IRA Z to Trust X but that such distributions from IRA Z for the calendar year and years thereafter be calculated using the life expectancy of the oldest potential beneficiary of Trust X as of the date of death of Taxpayer B. The oldest in age of the potential principal beneficiaries of Trust X as of the date of death of Taxpayer B is Taxpayer D. Thus the potential principal beneficiary of Trust X with the shortest life expectancy is Taxpayer D.

The agreement governing IRA Z contains the following pertinent provisions relating to minimum required distributions:

(1) Article IV, Paragraph 2 of IRA Z provides:

> "Unless otherwise elected by the time distributions are required to begin to the Grantor under paragraph 3, or to the surviving spouse under paragraph 4, other than in the case of a life

annuity, life expectancies shall be recalculated annually. Such election shall be irrevocable as to the Grantor and the surviving spouse and shall apply to all subsequent years. The life expectancy of a non-spouse beneficiary may not be recalculated."

(2) Article IV, Paragraph 3 of IRA Z provides:

"The Grantor's entire interest in the trust account must be, or begin to be distributed by the Grantor's required beginning date, April 1 following the calendar year end in which the Grantor reaches age 70 ½. By that date, the Grantor may elect, in a manner acceptable to the trustee, to have the balance in the trust account distributed in:

(a) A single sum payment.

(b) An annuity contract that provides equal or substantially equal monthly, quarterly, or annual payments over the life of the Grantor.

(c) An annuity contract that provides equal or substantially equal monthly, quarterly, or annual payments over the joint and last survivor lives of the Grantor and his or her designated beneficiary.

(d) Equal or substantially equal annual payments over a specified period that may not be longer than the Grantor's life expectancy.

(e) Equal or substantially equal annual payments over a specified period that may not be longer than the joint life and last survivor expectancy of the Grantor and his or her designated beneficiary."

(3) Article IV, Paragraph 4 of IRA Z provides:

"If the Grantor dies before his or her entire interest is distributed to him or her, the entire remaining interest will be distributed as follows:

(a) If the grantor dies on or after distribution of his or her interest has begun, distribution must continue to be made in accordance with paragraph 3."

Based on the above facts and representations, the following rulings have been requested:

1. That IRA Z be permitted to remain open in the name of Taxpayer B;

2. That the minimum distribution from IRA Z for the tax year and for future years be payable to Trust X, Part A for the benefit of Taxpayer C;

3. That the minimum distribution from IRA Z for the tax year and for future years be calculated on the life expectancy of Taxpayer D, who is the oldest in age of the potential beneficiaries of the principal of Trust X as of the date of death of Taxpayer B; and

4. That the minimum distribution from IRA Z for the tax year may be calculated using the applicable life expectancy table set forth in section 1.401(a)(9)-9 of the Final Income Tax Regulations published in the Federal Register on April 17, 2002.

Section 408(a) of the Code defines an individual retirement account as a trust that meets the requirements of section 408(a)(1) through 408(a)(6) of the Code. Section 408(a)(6) of the Code states that under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) of the Code and the incidental death benefit requirements of section 401(a) of the Code apply to the distribution of the entire interest of an individual for whose benefit the IRA trust is maintained.

Section 401(a)(9)(A) of the Code 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 IRA holder attains age 70 ½.

Section 401(a)(9)(B)(i) of the Code 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—

(I) the distribution of the employee's interest has begun in accordance with subparagraph (A) (ii), and

(II) 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 published in the Federal Register on July 27, 1987, as amended, (hereinafter referred to as 'old' proposed regulations), Q &A D-5(a) provides that pursuant to D-2A(a) of this section, only an individual may be a designated beneficiary for purposes of determining the distribution period under section 401(a)(9)(A)(ii) of the Code. Consequently, a trust itself may not be the designated beneficiary even though the trust is named as a beneficiary. However, if the requirements of paragraph (b) of this D-5A are met, distributions made to the trust will be treated as paid to the beneficiaries of the trust with respect to the trust's interest in the employee's benefit, and the beneficiaries of the trust will be treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)(A)(ii) of the Code. If, as of any date on or after the employee's required beginning date, a trust is named as a beneficiary of an employee and the requirements in paragraph (b) of this D-5A are not met, the employee will be treated as not having a designated beneficiary under the plan for purposes of section 401(a)(9)(A)(ii) of the Code. Consequently, for calendar years beginning after that date, distribution must be made over the employee's life (or over the period which would have been the employee's remaining life expectancy determined as if no beneficiary had been designated as of the employee's required beginning date).

In the case in which a trust is named as a beneficiary of an employee, all beneficiaries of the trust with respect to the trust's income in the employee's benefit are treated as having been designated as the beneficiaries of the employee under the plan.

Section 401(a)(9)-1 of the old proposed regulations, Q&A D-5(b) provides that the requirements of this paragraph (b) are met if, as of the later of the date on which the trust is named as a beneficiary of the employee, or the employee's required beginning date, and as of all subsequent periods during which the trust is named as a beneficiary, the following requirements are met:

(1) The trust is a valid trust under state law, or would be but for the fact that 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 from the trust instrument within the meaning of D-2 of this section.

(4) The documentation described in D-7 of this section has been provided to the plan administrator.

Section 401(a)(9)-1 of the old proposed regulations, Q&A E-5(a), provides, in general, that 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 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 old proposed regulations, Q&A D-3, provides that for purposes of calculating the distribution period in section 401(a)(9)(A)(ii) for distributions that begin prior to death, the designated beneficiary will be determined as of the plan participant's required beginning date.

Section 1.401(a)(9)-1 of the old 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 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 owner's or beneficiary's death.

Section 401(a)(9)-1 of the old 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 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 old proposed regulations, Q&A F-1(d), provides 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.

Section 1.401(a)(9)-1 of the old proposed regulations, Q&A F-3A, provides, 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.

Prior to the required beginning date for Taxpayer B to commence minimum distributions from IRA Z, Taxpayer B named the beneficiary of IRA Z as Trust X for the benefit of Taxpayer C. On the date of Taxpayer B's death, the named beneficiary of IRA Z was still the same. As a result of the timely designation by

Taxpayer B of a beneficiary of IRA Z, the minimum distribution required by section 401(a)(9) of the Code from IRA Z is, by the facts of this case, one computed using the joint and survivor life expectancy of Taxpayer B and the oldest in age of the potential beneficiaries of the principal of Trust X, who is Taxpayer D. Although Taxpayer D's life expectancy was not used in computing the dollar amount of the minimum distributions made during Taxpayer B's lifetime, it could have been. Although Taxpayer D's life expectancy was not included in computing the dollar amount of the minimum distributions made during Taxpayer B's lifetime, it may be used now, subsequent to the death of Taxpayer B, to determine the amount of the minimum distributions from IRA Z payable to Trust X for the benefit of Taxpayer C.

Accordingly, the use of the single life expectancy of Taxpayer B, as recalculated, to determine the minimum required distributions from IRA Z for calendar years during Taxpayer B's lifetime, does not preclude use of the life expectancy of the oldest in age of the potential beneficiaries of the principal of Trust X, pursuant to the rules set out in Q&As D-5 and E-5 of section 1.401(a)(9)-1 of the old proposed regulations, to determine the minimum required distributions from IRA Z for calendar years after Taxpayer B's death and does not violate the "at least as rapidly" rule of section 401(a)(9)(B)(i) of the Code.

Thus with respect to ruling requests one, two and three, we conclude, due to Taxpayer B's timely naming Trust X as the beneficiary of IRA Z, and timely designating Taxpayer D for Code section 401(a)(9) purposes, distribution of the total balance remaining in IRA Z after the death of Taxpayer B need not have been made by December 31, Thus, we further conclude that IRA Z is permitted to remain open under the name of Taxpayer B, that the minimum distribution from IRA Z for the tax year and minimum distributions in future years from IRA Z may be paid to Trust X, and that the minimum distribution from IRA Z for the tax year and minimum distributions in future tax years from IRA Z must be calculated based on the life expectancy of Taxpayer D, who is the oldest in age of the potential beneficiaries of the principal of Trust X as of the date of death of Taxpayer B.

Section 634 of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") instructed the Secretary of Treasury to modify the life expectancy tables used for purposes of the minimum distribution rules to reflect current life expectancy. In accordance with that instruction, the final income tax regulations under section 401(a)(9) of the Code which were published in the Federal Register on April 17, 2002, and in 2002-19 I.R.B. 852, adopt new life expectancy tables.

For calendar years beginning on or after January 1, 2003, taxpayers must apply the life expectancy tables under the final regulations under section 401(a)(9) of the Code to determine required minimum distributions. For calendar year 2002, taxpayers may choose to apply either the final regulations under section 401(a)(9) of the Code or the 2001 proposed regulations or the old proposed regulations.

With respect to ruling request four, we conclude that the minimum distribution from IRA Z, for the 2002 tax year, may be calculated using the applicable life expectancy table set forth in section 1.401(a)(9)-9 of the final regulations.

These rulings are based upon the assumption that IRA Z meets the requirements of section 408 of the Code at all relevant times.

This ruling is directed only to the taxpayer who requested it and applies only to IRA Z. Section 6111(j)(3) of the Code provides that this ruling may not be used or cited as precedent.

If you have any questions about this ruling, please contact xxxxx xxxxx, Badge # xx-xxxxx, of T:EP:RA:T2 at xxx xxx-xxxx (or FAX at xxx xxx-xxxx).

Sincerely yours,

Joyce E. Floyd
Manager, Employee Plans
Technical Group 2
Tax Exempt and Government
Entities Division

Enclosures:
Deleted copy of letter ruling
Form 437