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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR 10 2003

UICs: 401.06-00
401.06-02

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Company M:

Trust T:

IRA X:

IRA Y:

IRA W:

State Z:

Date 1:

Date 2:

Date 3:

Date 4:

Dear Mr. :

This is in response to the, request for letter ruling submitted on your behalf by your authorized representative, as supplemented by correspondence dated , , and , and a telephone conversation, in which you request a letter ruling under § 401(a)(9) of the Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 1, 1932, died on Date 2, 2000, without having attained age 70 ½. Taxpayer A was survived by his spouse, Taxpayer B.

At of his date of death, Taxpayer A was the owner of two individual retirement arrangements, IRA X and IRA Y, maintained with Company M. Taxpayer A had named his spouse, Taxpayer B, as the beneficiary of his IRA X and IRA Y.

On Date 3, 1986, Taxpayer A executed Trust T which was subsequently restated. On Date 3, 1986, Taxpayer A also executed his Last Will and Testament. Article Third of Taxpayer A's will provides, in short, that Taxpayer A's residual trust passes to Trust T.

After the death of Taxpayer A, Taxpayer B rolled over a portion of Taxpayer A's IRAs X and Y into an IRA set up and maintained in the name of Taxpayer B.

On Date 4, 2001, which was within nine (9) months of Date 2, 2000, Taxpayer B executed a Partial Disclaimer by means of which Taxpayer B disclaimed her remaining interest in Taxpayer A's IRA X and IRA Y. The Date 4, 2001 Disclaimer provides, in relevant part, that the property disclaimed becomes a part of the residuary estate of Taxpayer A and, as a result, passes under Article Third of Taxpayer A's Will. The Date 4, 2001 Disclaimer also provides, in relevant part, that the Disclaimer is intended to be a valid disclaimer within the meaning of Code § 2518.

The portions of IRAs X and Y that were not distributed to Taxpayer B and not rolled over into an IRA in Taxpayer B's name were transferred, by means of a trustee-to-trustee transfer(s), into IRA W, an IRA set up and maintained in the name of Taxpayer A (Deceased) for the benefit of Trust T.

Your authorized representative has asserted, on your behalf, that distributions from IRA W have been made with respect to calendar years 2001 and 2002 based on the life expectancy of Taxpayer B, the eldest beneficiary of Trust T.

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

That Trust T is the beneficiary for purposes of Code § 401(a)(9) of IRA W. Furthermore, that Trust T represents a "See-Through Trust", as that term is used in the "Final" Income Tax Regulations promulgated under Code § 401(a)(9). As such, the life expectancy of Taxpayer B, the eldest beneficiary of Trust T, may be used to compute distributions required pursuant to Code § 401(a)(9), which is made applicable to IRAs pursuant to Code § 408(a)(6), from said IRA W.

With respect to your ruling request, Code 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 or the life expectancy of such employee and a designated beneficiary.

Code § 401(a)(9)(B)(ii) provides that where distributions have not begun in accordance with paragraph (A)(ii), the entire interest of an employee will be distributed within 5 years after the death of such employee.

Code § 401(a)(9)(B)(iii) provides an exception to the 5-year rule for amounts paid over life of a beneficiary if (I) any portion of an employee is paid to (of for the benefit) of a designated beneficiary, (II) such portion will be paid over the life (or life expectancy) of said beneficiary, and (III) such distribution begin no later than one year after the date of the employee's death or over such later date as the Secretary may provide by regulations.

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 1/2.

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, provides that the regulations apply for determining required minimum distributions for calendar years beginning after January 1, 2003. For determining required distributions for calendar year 2002, taxpayers may rely on the 1987 proposed regulations, the 2001 proposed regulations, or the "Final" Regulations.

§ 1.401(a)(9)-3 of the "Final" regulations, Question & Answer-1 provides, in general, that, if distributions have not begun in accordance with § 401(a)(9)(A)(ii), distribution of an employee's entire interest must be made in accordance with one of the methods described in Code §§ 401(a)(9)(B)(ii) or (iii) and (iv).

§ 1.401(a)(9)-3 of the "Final" regulations, Q&A-2, provides that, in order to satisfy the 5-year rule of Code § 401(a)(9)(B)(ii), the employee's entire interest must be distributed by the end of the calendar year which contains the fifth anniversary of the date of the employee's death.

§1.401(a)(9)-4 of the "Final" regulations, Q&A-4(a) 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.

§1.401(a)(9)-4 of the "Final" regulations, Q&A-4(a) further provides, in relevant part, that any person who was a beneficiary as of the date of the employee's death but who is not a beneficiary as that September 30 (e.g. because the person receives the entire benefit to which he 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 after the employee's death. Accordingly, if a person disclaims entitlement to an employee's benefit pursuant to a disclaimer that satisfies Code § 2518 by that September 30 thereby allowing other beneficiaries to receive the benefit in lieu of the disclaiming person, the disclaiming person is not taken into account in determining the employee's designated beneficiary.

§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. If a person, e.g. an estate, is named a beneficiary of an employee's interest in a plan or IRA, that employee will be treated as having designated no beneficiary. However, Q&A-5 of

§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 certain requirements are met.

With respect to your ruling request, the issue to be resolved is whether, pursuant to the "Final" regulations, Trust T is the beneficiary of the disclaimed portion of Taxpayer A's IRAs X and Y such that it may be treated as a "See-Through" Trust under Q&A-5 of §1.401(a)(9)-4 and its eldest beneficiary treated as the Code § 401(a)(9) designated beneficiary of said disclaimed IRA portions. In that respect, we note that, although Trust T is the ultimate recipient of the portions of IRAs X and Y disclaimed by Taxpayer B (now IRA W), Trust T takes said disclaimed portions as the residuary beneficiary of Taxpayer A's Last Will and Testament pursuant to Article Third of said Will. Thus, for purposes of Code § 401(a)(9), Taxpayer A's estate is the beneficiary of said disclaimed IRAs.

As noted above, under the "Final" Regulations, an estate may not be treated as a Code § 401(a)(9) designated beneficiary. Thus, in this case, with respect to the disclaimed portions of Taxpayer A's IRAs X and Y, Taxpayer A is treated as not having designated a beneficiary for purposes of Code § 401(a)(9). Therefore, in the absence of a designated beneficiary, distributions from said disclaimed portions of IRAs X and Y (now IRA W), must be made in accordance with the 5-year rule of Code § 401(a)(9)(B)(ii), as explained in § 1.401(a)(9)-3 of the "Final" regulations, Q&A-2.

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

That, for purposes of Code § 401(a)(9), although Trust T may represent a "See-Through Trust", as that term is used in the "Final" Income Tax Regulations promulgated under Code § 401(a)(9), Trust T is not the named beneficiary of the disclaimed portions of Taxpayer A's IRAs X and Y (now IRA W). As such, the life expectancy of Taxpayer B, the eldest beneficiary of Trust T, may not be used to compute distributions required pursuant to Code § 401(a)(9), which is made applicable to IRAs pursuant to Code § 408(a)(6), from said IRA W. Instead distributions from IRA W must be made in accordance with the 5-year rule of Code § 401(a)(9)(B)(ii) and must be completed no later than December 31, 2005.

This letter ruling is based on the assumption that IRAs X, Y, and W either met, meet, or will meet the requirements of Code § 408 at all times relevant thereto, It also assumes that the disclaimer referenced herein met the requirements of Code § 2518.

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.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Manager, Employee Plans
Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose