200349009

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UICs: 408.00-00
408.06-00

SEP 9 2003

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Taxpayer D:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Trust T:

Subtrust U:

IRA X:

Company M:

State N:

Dear Ms. :

This is in response to the , request for letter rulings under § 408(d)(3) of the Internal Revenue Code, as supplemented by correspondence dated

, submitted on your behalf by your authorized representative. The request for letter rulings is based on the following facts and representations.

Taxpayer A, whose date of birth was Date 1, 1934, died on Date 2, 2003, at age 68 not having reached her "required beginning date" as that term is defined in § 401(a)(9)(C) of the Internal Revenue Code. Taxpayer A was survived by two daughters, Taxpayer B and Taxpayer C. Taxpayer B and Taxpayer C were alive as of the date of this ruling request.

As of her date of death, Taxpayer A was the owner of an individual retirement arrangement, IRA X, maintained with Company M. By means of a beneficiary designation dated Date 4, 2001, Trust T was named the beneficiary of Taxpayer A's IRA X.

Trust T was executed on Date 3, 2001. § 2.1 of Trust T provides that the trust was revocable by Taxpayer A. Thus, at the death of Taxpayer A, Trust T became irrevocable. Taxpayer D is the trustee of Trust T. Trust T is valid under the laws of State N.

Company M, the custodian of IRA X, has been provided with information concerning the terms of Trust T and the identity of the beneficiaries thereof.

Article 4 of Trust T provides that at the death of Taxpayer A, the balance of Trust T, including IRA X, was to be given to Taxpayers B and C in equal shares. The language of Trust T contained no conditions limiting the payment of Taxpayer B's share. Article 5 of Trust T provides that Taxpayer C's share is to be retained by the trustee of Trust T and held in Subtrust U created under the terms of Trust T for the benefit of Taxpayer C. Article 5.1 of Trust T further provides that the trustee of Trust T contains sole and absolute discretion to use as much of the income and principal of Trust T for Taxpayer C's benefit considering Taxpayer C's other income. At Taxpayer C's death, remaining Trust T assets held for the benefit of Taxpayer C are to be paid to Taxpayer C's descendants, per stirpes. If Taxpayer C has no descendants, then remaining trust assets are to be paid to Taxpayer A's surviving descendants, per stirpes.

Taxpayer B's date of birth was Date 5, 1963; Taxpayer C's date of birth was date 6, 1966. Taxpayer B is the oldest potential beneficiary under the terms of Trust T of Taxpayer A's IRA X.

Trustee D proposes to divide IRA X, by means of trustee to trustee transfers, into two distinct individual retirement arrangements (IRAs). Each transferee IRA will be maintained in the name of Taxpayer A (deceased). One transferee IRA will be maintained for the benefit of Taxpayer B, beneficiary thereof. The second transferee IRA

will be maintained for the benefit of the subtrust created under the terms of Trust T which subtrust is being maintained for the benefit of Taxpayer C to pay Trust T assets to her as provided under Trust T terms. Distributions from each of the transferee IRAs will be made over the life expectancy of Taxpayer B, the oldest beneficiary of IRA X.

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

1. That Taxpayer A's IRA X may be subdivided, by means of a series of trustee to trustee transfers, so that a separate IRA may be created in the name of Taxpayer A (deceased) for the benefit of Taxpayer B; and

2. That Taxpayer A's IRA X may be subdivided, by means of a series of trustee to trustee transfers, so that a separate IRA may be created in the name of Taxpayer A (deceased) for the benefit of Trust T which will hold said transferred IRA amounts, and distribute said amounts, for the benefit of Taxpayer C.

With respect to your ruling requests, Code § 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.

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 § 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) (before his required beginning date), his plan or IRA interest must be distributed within five years after the death of the employee or IRA holder.

Code § 401(a)(9)(B)(iii) provides for an exception to the 5-year rule if the plan participant or IRA holder dies with a designated beneficiary. In that case, distributions must begin no later that 1 year after the date of death of the IRA holder (or a later date if set down in regulations promulgated by the Secretary) and must be made over the life of the beneficiary (or over a period not exceeding the life expectancy of the beneficiary.

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, provide that the regulations apply for determining required minimum distributions for calendar years beginning after January 1, 2003

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.

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 §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)-3 of the "Final" regulations, Q&A-3, provides that, in order to satisfy the rule of Code § 401(a)(9)(B)(iii), if the beneficiary is not the employee's or IRA holder's surviving spouse, then required distributions must begin no later than the end of the calendar year following the calendar year which contains the plan participant's or IRA holder's date of death.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-5(b) provides, in summary, that if an employee dies before his required beginning date, 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 an employee who has a non spouse designated beneficiary, the applicable distribution period measured by the beneficiary's remaining life expectancy is determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the employee's death. In subsequent years, the applicable distribution 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)-9 of the "Final" regulations, Q&A-1, provides the relevant Single Life Expectancy Table.

Section 1.401(a)(9)-8 of the "Final" regulations, Q&A-2(a), provides the "separate account" rules with respect to defined contribution plans. A "separate account" is an account under which the beneficiary or beneficiaries differ from the beneficiary or beneficiaries of the other accounts. In general, if separate accounts are set up, for years subsequent to the calendar year containing the date on which the separate accounts were established, or the date of death if later, a separate account under a plan is not aggregated with the other separate accounts under the plan in order to determine whether the distributions from such separate account satisfy the requirements of Code § 401(a)(9). Instead, the rules in Code § 401(a)(9) apply separately to each separate account under the plan.

Section 1.401(a)(9)-8 of the "Final" regulations, Q&A-3, provides that a separate account is a separate portion of an employee's benefit which reflects the separate interest of an employee's beneficiary under the plan as of the employee's death for which separate accounting is maintained. The separate accounting must allocate all post-death investment gains and losses, contributions and forfeitures, for the period prior to the establishment of the separate accounts on a pro-rata basis in a consistent and reasonable manner among the separate accounts.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-5(c), provides, in relevant part, that the separate account rules are not available to beneficiaries of a trust with respect to the trust's interest in an employee's benefit.

Code § 408(d)(1) provides, generally, that, in accordance with the rules of § 72, amounts paid or distributed from an IRA are included in the gross income by the payee or distributee.

Code § 408(d)(3)(C) provides, generally, that amounts from an "inherited" IRA cannot be rolled over into another IRA. In general, an "inherited" IRA is an IRA maintained by an individual who acquired said IRA by reason of the death of another if the acquiring individual is not the surviving spouse of said other individual. In this case, as noted above, Taxpayers B and C are Taxpayer A's daughters.

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 § 408(d). Furthermore, such a transfer does not constitute a rollover distribution.

Additionally, a trustee to trustee transfer, as described in Rev. Rul. 78-406, does not constitute a distribution or payment as those terms are defined for purposes of Code § 408(d).

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 issue raised in this ruling request is whether beneficiary-daughters of an IRA holder may, after the death of the IRA holder, have their one-half interests in the deceased's IRA transferred to IRAs set up and maintained in the name of the deceased when each resulting IRA is set up solely to benefit one of the daughters.

Neither the Code nor the "Final" regulations promulgated under Code § 401(a)(9) preclude the posthumous division of IRA X into more than one IRA. However, the "Final" regulations do preclude "separate account" treatment for Code § 401(a)(9) purposes where amounts pass through a trust. .

In this case, absent the Trust T trustee's decision to transfer, by means of trustee-to-trustee transfers, each daughter's one-half interest in Taxpayer A's IRA X to her beneficiary IRA, as described above, distributions of the entire IRA X interest would

have to be made over Taxpayer B's remaining life expectancy in accordance with § 1.401(a)(9)-5 of the "Final" regulations, Q&A-5(c)(1). After the proposed trustee to trustee transfers, Taxpayers B and C will receive required distributions over Taxpayer B's remaining life expectancy. Thus, the proposed trustee to trustee transfers will have no effect on either the timing or the amount of minimum required distributions.

Thus, based on the specific facts and representations surrounding this ruling request, we conclude as follows:

1. That Taxpayer A's IRA X may be subdivided, by means of a series of trustee to trustee transfers, so that a separate IRA may be created in the name of Taxpayer A (deceased) for the benefit of Taxpayer B; and

2. That Taxpayer A's IRA X may be subdivided, by means of a series of trustee to trustee transfers, so that a separate IRA may be created in the name of Taxpayer A (deceased) for the benefit of Trust T which will hold said transferred IRA amounts for, and distribute said amounts for, the benefit of Taxpayer C.

This ruling letter is based on the assumption that IRA X and the beneficiary IRAs created after the trustee to trustee transfers either have met, are meeting, or will meet the requirements of Code § 408 at all times relevant thereto.

Pursuant to a power of attorney on file with this office, the original 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 Division
Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose