Internal Revenue Service

Department of the Treasury

Washington, DC 20224 **200109051**

Contact Person:

Telephone Number:

In Reference to:

T:EP:RA:T2

Date:

DEC 0 8 2000

S.I.N.: 408.03-00

Legend:

Amount N =
Amount O =
Individual A =
Individual B =
Individual C =
IRA J =

Trust M =
State X =

Dear :

This is in response to the ruling request dated February 28, 2000, as supplemented by letters dated April 25, 2000, September 23, 2000, and October 31, 2000, in which your authorized representative has requested rulings on your behalf concerning the calculations of the minimum distributions as required by section 401(a)(9) of the Internal Revenue Code and the proposed trustee to trustee transfer of Individual A's Individual Retirement Account ("IRA").

Your authorized representative has submitted the following facts and representations:

Individual B is the trustee of Trust M. The trust has two beneficiaries, Individual B and Individual C.

Individual A was born on March 30, 1926, and died on August 22, 1999. Prior to attaining age 70½ on September 30, 1996, Individual A had established for himself IRA J on October 31, 1995. Individual A named Trust M as the beneficiary of IRA J on that date. Prior to his death Individual A received minimum distributions based on his recalculated single life expectancy.

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Upon the death of Individual A, IRA J is distributable to Individual B, as trustee of Trust M. The trust is valid under state law. The trust became irrevocable upon Individual A's death. Trust M lists the two children of Individual A as beneficiaries; namely, Individual B, who was born on September 2, 1958, and Individual C, who was born on February 9, 1946.

The trust instrument of Trust M provides in part A of the Sixth paragraph as follows: "The Trustee shall distribute, free of Trust, Seventy Percent (70%) of the Trust Estate to Settlor's daughter, Individual B, if she is still living."

The named beneficiary of IRA J is the trustee of Trust M with the legal right to distribution of IRA M. The statement in the trust document that 70 percent will be paid to Individual B free of trust does not circumvent the legal right of the trustee to the payment. Under State X trust law, the trustee is nevertheless 100 percent accountable to the beneficiary. Once the trustee of the trust actually receives a distribution of a minimum distribution payment from IRA J, Individual B has the right enforceable in equity to the distribution with no restrictions on it. Moreover, if Individual B directs the trustee to withdraw more than the minimum distribution amount, the trustee has the fiduciary obligation to follow that direction. After the trustee receives the funds they must flow through to Individual B.

The trust instrument of Trust M provides in part B of the Sixth paragraph as follows:

> The Trustee shall retain in Trust thirty Percent (30%) of the Trust Estate for the benefit of Settlor's daughter, Individual C. The Trustee shall pay to or apply for the benefit of Individual C, so much of the income and principal of her Trust as the Trustee, in her absolute discretion, determines to be advisable to provide for her comfort and happiness, but not for her support. In making such payments and expenditures, the Trustee shall take into account any funds or assistance the Trustee knows to be available to Individual C from governmental and private sources. Individual C's interest in the income or principal of this Trust shall be free from the control or interference of any of Individual C's creditors or of any government agency providing aid or benefits to her and shall not be subject to attachment or susceptible of anticipation or alienation. Upon the death of Individual C or in the event that the terms and conditions of this Trust are challenged in court by any government agency, this Trust shall terminate and the corpus of this Trust shall be paid absolutely to Individual B, if she is living.

With reference to the 30 percent share payable for the comfort and happiness of Individual C, the trustee is also the named beneficiary with the legal right to receive the funds, however, the 30 percent payable to the trustee is subject to Individual C's general power of appointment. The words in Trust M specifically state that it will be paid for her comfort and happiness. State X law is in accord with the proposition that a power to use property for the comfort and happiness of the beneficiary entitles the beneficiary to a flow through of the benefits. The funds are to be received by the trustee and used for the comfort and happiness of the beneficiary. Although Trust M uses the words "absolute discretion" to describe the diiretion of the trustee, the State X Probate Code states that such discretion is nevertheless subject to fiduciary principles, and in this case the language of Trust M as well as such fiduciary principles indicate that all the benefits are to flow through Individual C. Thus, the clear intent of Trust M is for Individual C's 30 percent share to flow through her.

Upon the death of Individual C, any balance is payable out right to Individual B. Unless sooner terminated in accordance with other provisions of the instrument, Trust M shall terminate 21 years after the death of the Settlor (Individual A). The principal and undistributed income of the terminated Trust M shall be diibuted to the then income beneficiaries of Trust M in the same proportion that the beneficiaries are entitled to receive income when Trust M terminates. Individual B, as trustee, would like to make to make a trustee-to-trustee transfer of IRA J to a new special IRA account, that would be under the name and social security number of Individual A for the benefit of Individual B and Individual C.

You have determined that the minimum distribution for calendar year 2000 will equal Amount N. Amount N is based on the IRA J account balance as of December 3 1, 1999, Amount 0, divided by Individual C's remaining life expectancy of 29.1. Individual A attained age 70% in the calendar year 1996, and Individual C was age 50 in the 1996 calendar year. Individual A received distributions for four calendar years. Individual C's life expectancy was obtained by using Table V provided in section I .72-9 of the Income Tax Regulations. You reduced this sum by the number of years since Individual A turned 70½, 4 years, to derive Individual C's life expectancy of 29.1 for the year 2000.

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

1. Distributions from IRA J should be paid to the successor trustee of Trust M over the life expectancy of Individual C, the oldest beneficiary of the Trust, and the minimum required distributions for the year 2000 should be Amount N. In each subsequent year, Individual A's IRA account balance as of December 3 1" should be divided by 29.1 years (minus one for each subsequent year) in order to determine the minimum required diiribution for each such calendar year.

2. IRA J may be transferred to a new special IRA account under the name and social security number of Individual A for Trust M for the benefit of Individual B and Individual C.

Section 408(a) of the Code defines an individual retirement account as a trust which meets the requirements of sections 408(a)(1) through 408(a)(6). Section 408(a)(6) states 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. Section 401(a)(9) sets forth the general rules applicable to required minimum distributions from qualified plans.

Section 401(a)(9)(A)(ii) of the Code provides that a trust shall not constitute a qualified trust under this subsection unless the plan provides that the entire interest of each employee will be distributed, beginning not later than the required beginning date, in accordance with regulations, 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 40 1 (a)(9)(C) of the Code provides that, for purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the later of (I) the year in which the employee attains age 70½, or (II) the calendar year in which the employee retires.

Section 401(a)(9)(B)(i) of the Code provides that, where distributions have begun under subparagraph (A)(ii), a trust shall not constitute a qualified trust under this section unless the plan provides that if-

(1) 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 distributions being used under subparagraph (A)(ii) as of the date of his death.

Section 1.401(a)(9)-1 of the Proposed Income Tax Regulations, Q&A D-2(a)(l), provides, in pertinent part, that designated beneficiaries are only individuals who are designated as beneficiaries under the plan In general, it provides that an individual may be designated as a beneficiary under the plan either by the terms of the plan or, if the plan provides, by an affirmative election by the employee (or the employee's surviving spouse) specifying the beneficiary. A beneficiary designated as such under the plan is an individual who is entitled to a portion of an employee's benefit, contingent on the employee's death or another specified event.

Section 1.40 1 (a)(9)-1 of the Proposed Regulations, Q&A D-3(a), provides that for purposes of calculating the distribution period described in section 401(a)(9)(A)(ii) (for

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distributions before death), the designated beneficiary will be determined as of the employee's required beginning date. If, as of that date, there is no designated beneficiary under the plan to receive the employee's benefit upon the employee's death, the distribution period is limited to the employee's life (or a period not extending beyond the employee's life expectancy).

Section 1.401(a)(9)-1 of the Proposed Regulations, Q &A D-5 provides, in part,

(a) Pursuant to D-2A of this section, only an individual may be designated beneficiary for purposes of determining the distribution period under section 401(a)(9)(A)(ii). Consequently, a trust itselfmay 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 distributions period under section 401(a)(9)(A)(ii). If as of any date on or after the employee's required beginning date, a trust is named as a beneficiary of the 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). 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).

(b) 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 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 document described in D-2 of this section has been provided to the plan administrator.

(c) In the case of payments to a trust having more than one beneficiary, see E-5 of this section for the rules for determining the designated beneficiary whose life expectancy will be used to determine the distribution period.

Section 1.401 (a)(9)-1 of the Proposed Regulations, Q & A E-5, provides, in pertinent part, 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 distribution period.

Section 401(a)(9)(D) of the Code permits an employee and his spouse to recalculate their life expectancies annually. Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A E-S(a), provides guidance on how an employee's life expectancy is recalculated and provides that upon the death of the employee, the recalculated life expectancy of the employee (or the employee's spouse) will be reduced to zero in the calendar year following the calendar year of death. In any calendar year in which the last applicable life expectancy is reduced to zero, the plan must distribute the employee's entire remaining interest prior to the last day of such year in order to satisfy section 401(a)(9).

Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A E-S(b), provides guidance on calculating the applicable life expectancy when the employee's life expectancy is being recalculated and the life expectancy of his designated beneficiary is not recalculated. It provides, in relevant part, that if the designated beneficiary is not the employee's spouse and the life expectancy of the employee is being recalculated annually, the applicable life expectancy for determining the minimum distribution for each distribution calendar year will be determined by recalculating the employee's life expectancy but not recalculating the beneficiary's life expectancy. Such applicable life expectancy is the joint and last survivor expectancy using the employee's attained age as of the employee's birthday in the distribution calendar year and an adjusted age of the designated beneficiary. The adjusted age of the designated beneficiary is determined-as follows: Fit, the beneficiary's applicable life expectancy is calculated based on the beneficiary's attained age as of the beneficiary's biiy in the calendar year described in E- 1, reduced by one for each calendar year which has elapsed since that calendar year. The age (rounded ifnecessary to the higher age) in Table V of section 1.72-9 is then located which corresponds to the designated beneficiary's applicable life expectancy. Such age is the adjusted age of the designated beneficiary. As provided in paragraph (a), upon the death of the employee, the life expectancy of the employee is reduced to zero in the calendar year following the calendar year of the employee's death. Thus, for determining the minimum diiibution for such calendar year and subsequent calendar years, the applicable life expectancy is the applicable life expectancy of the designated beneficiary determined under this paragraph.

Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A E-l(a), provides, generally, that for required diiiutions under section 401(a)(9)(A) of the Code, life expectancies are calculated using the employee's (and the designated beneficiary's) attained age as of the employee's biihday (and the designated beneficiary's birthday) in the calendar year in which the employee attains age 70%.

Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A F-5 provides, generally, that 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.

Because Individual A's life expectancy was being recalculated, upon his death, in accordance with Q&A E-S(a) of section 1.401(a)(9)-1 of the Proposed Regulations, his life expectancy was reduced to zero. Although his benefit was paid in the form of a single life expectancy, upon his death, his life expectancy was not the last applicable life expectancy because he timely designated his beneficiary by his required beginning date in accordance with Q&A D-3(a) of the Proposed Regulations. Therefore, pursuant to Q&A E-S(b) of section 1.401(a)(9)-1 of the Proposed Regulations, for purposes of determining the minimum distribution in the calendar year after the death of the Grantor, the applicable life expectancy is the life expectancy of the designated beneficiary as determined under that section.

Because Individual A named Trust M as his beneficiary and because Trust M is a trust that meets the requirements of Q&A D-5A(b) of the Proposed Regulations, the distributions of IRA J made to Trust M will be treated as paid to the beneficiaries of Trust M, and the beneficiaries of Trust M will be treated as having been designated as beneficiaries of IRA J for purposes of determining the distribution period under section 401(a)(9)(A)(ii) of the Code.

Since more than one individual was designated as a beneficiary with respect to IRA J, pursuant to section 1.401 (a)(9)-1 of the Proposed Regulation, Q&A E-5(a)(l), the beneficiary who is the oldest and who has the shortest life expectancy, will be the designated beneficiary for purposes of determining the distribution period under IRA J.

Individual C had the shorter life expectancy of the two designated beneficiaries on Individual A's required beginning date. Therefore, she is the designated beneficiary whose life expectancy will be used when determining the minimum distribution period under IRA J for the calendar year commencing after the year of Individual A' death and for all subsequent years thereafter.

Pursuant to section 1.401(a)(9)-1 of the Proposed Regulations, Q&As E-l(a) and E-S(b), Individual C's applicable life expectancy is calculated based on her attained age as of her birthday in the calendar year in which Individual A attained age 70% (I 996), reduced by one for each calendar year which has elapsed since that calendar year. Pursuant to Table V provided in section 1.72-9 of the regulations, her single life expectancy in the year that Individual C attained 70% was 33.1. This number is reduced for each year subsequent to 1996, 33.1 minus 4, or 29.1. The account balance as of the last valuation date in the previous year was Amount 0. In future years, the calculation of the life expectancy would be the number 29.1 minus one for each subsequent year.

Accordingly, with respect to ruling request one, we conclude that distributions from IRA J should be paid to the successor trustee of Trust M over the life expectancy of Individual C, the oldest beneficiary of the Trust, and that the minimum required distributions for the year 2000 should be Amount N and in each subsequent year, Individual A's IRA account balance as of December 31" should be divided by 29.1 years (minus one for each subsequent year) in order to determine the minimum required distribution for each such calendar year.

Section 408(d)(1) of the Code provides, in general, that any amount paid or distributed out of an individual retirement plan shall be Included in gross income by the payee or distributee. Section 408(d)(3)(A)(i), however, provides that such amount is not includible in the gross income of the individual for whose benefit the amount is maintained if the entire amount received is paid into another IRA for the benefit of such individual not later than 60 days after receipt of the payment or distribution.

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

In the situation presented, IRA J has been maintained in the name of the deceased IRA holder. As noted in Revenue Ruling 78405, the mere transfer of funds of the deceased IRA holder's IRA between trustees will not result in any payment or distribution of funds from the IRA to the IRA beneficiary. Further, the designation of the new IRA will be in the name of Individual A for the benefit of Individual B and Individual C. Accordingly, we conclude with respect to the second ruling request that the account may be transferred to a new special IRA account under the name and social security number of Individual A for the benefit of Individual B and Individual C.

These rulings are based on the assumption that IRA J and the new IRA otherwise meet the requirements of section 408 of the Code.

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

In accordance with a power of attorney on file in this office, a copy of this ruling is being sent to your authorized representative.

Sincerely yours,

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

Enclosures:
Deleted Copy of this Letter
Notice of Intention to Disclose

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