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

200208030

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NOV 26 2001

T:EP:RA:T3
UIL: 401.00-00
408.00-00
2518.00-00

Legend:

Grantor =

IRA X =

Custodian A =

Beneficiary E =

Beneficiary F =

Beneficiary G =

Beneficiary H =

Beneficiary I =

This is in response to a request for a private letter ruling dated September 27, 2000, as revised and supplemented by letters of March 1, 2001, March 27, 2001, March 30, 2001, July 20, 2001, July 31, 2001, August 30, 2001, and October 2.2001, submitted on your behalf by your authorized representative. In support of your request, your authorized representative has submitted the following facts and representations.

Grantor was born on September 2. 1926, and died on December 28, 1996. He had not reached the required beginning date for distributions from IRAs and qualified plans. At the time of his death, Grantor maintained IRA X with Custodian A. Grantor designated his five children, Beneficiaries E, F, G, H and I as designated death beneficiaries of IRA X in the IRA X adoption agreement form executed on August 17, 1992, each child having an equal interest in IRA X. On May 14, 1997, Beneficiary E, the oldest named IRA beneficiary, disclaimed any interest payable to him under IRA X. The disclaimer was delivered to the IRA custodian on the same day. Beneficiary E did not receive any distribution or benefit from IRA X. On September 2. 1997, Beneficiaries F, G, H and I (the "Beneficiaries") created sub-accounts within IRA X. Each sub-account is for the exclusive benefit of only one of the Beneficiaries and it may only be used for that beneficiary. Each sub-account was identified as the "GRANTOR DECD IRA FBO <child's name> AS BENE" with a separate account number. Each beneficiary has the right to direct investment as well as withdraw funds with regard to his or her account. Each of the sub-accounts has been administered as a separate account retroactive to the date of Grantor's death, including allocating investment gains and losses, and contributions and forfeitures on a pro rata basis in a reasonable and consistent manner between such portion and any other benefits. In addition, the required distribution for each beneficiary was made exclusively from the sub-account of the beneficiary for whom the distribution was made. At all times subsequent to Grantor's death, IRA X has been maintained in the name of Grantor. After the disclaimer of Beneficiary E, Beneficiary F became the oldest beneficiary designated by Grantor under IRA X. The Beneficiaries began to receive distributions from IRA X on or before December 31, 1997. For the years 1997, 1998 1999 and 2000, the Beneficiaries calculated the required minimum distributions based upon the life expectancy of Beneficiary F. For the current year, 2001, and future years, the Beneficiaries propose to calculate required minimum distributions based upon each sub-account holder's respective life expectancy. To allow for management according to each Beneficiary's investment objectives, It is also proposed to make a trustee to trustee transfer of each of IRA X's sub-accounts to a new custodian and new IRA which will continue to be in the name of Grantor.

Based on the above, you request the following letter rulings:

(1) That distributions to Beneficiary H will qualify for the exception to the five-year rule under section 401 (a)(9)(B)(iii) of the Code

(2) That the disclaimer executed by Beneficiary E was a qualified disclaimer within the meaning of section 2518(b) of the Code.

(3) That Grantor's beneficiary designation, naming his children in equal, discernable shares, created separate accounts as that term is defined under section 1.401 (a)(9)-1 Q&A H-2A. Therefore, Beneficiary H may use his own life expectancy in calculating required minimum distributions from such beneficiary's respective account pursuant to section 1.401 (a)(9)-1 Q&A H-z(b).

(4) That the creation of an equal sub-account for Beneficiary H did not affect the tax deferred status of funds and will not be treated as a taxable distribution.

(5) That the trustee to trustee transfer of the existing IRA sub-account maintained for the benefit of Beneficiary H to a new custodian, while maintaining title in the name of Grantor, will not constitute a payment or distribution of taxable funds to Beneficiary H.

Section 408(a) of the Code defines an individual retirement account as a trust which meets the requirements of sections 408(a)(l) through 408(a)(6). 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) 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) of the Code 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).

Under section 401(a)(9)(B)(ii), if an employee dies before distribution has begun in accordance with section 401(a)(9)(A)(ii), the entire interest of the employee must be distributed within five years after the death of the employee.

Section 401(a)(9)(B)(iii) provides an exception to the five-year rule if any portion of an employee's interest is payable to a designated beneficiary over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary) and such distributions begin not later than one year after the date of the employee's death. Section 1.401 (a)(9)-1 of the Proposed Income Tax Regulations ("Proposed Regulations") Q&A-C-3 provides that the exception provided in section 401(a)(9)(B)(iii) of the Code will be satisfied if the distributions to a non-spouse beneficiary begin on or before December 31 of the calendar year immediately following the year in which the employee dies.

Q&A-D-2 of section 1.401 (a)(9)-1 of the Proposed Regulations provides, in pertinent part, that a designated beneficiary need not be specified by name in the plan or by the employee to the plan in order to be a designated beneficiary so long as the individual who is to be the beneficiary is identifiable under the plan as of the employee's required beginning date, or as of the date of the employee's death (in the case of distributions governed by section 401(a)(9)(B)(iii) and (iv) and at all subsequent times. Thus, for example, a beneficiary may be designated by an affirmative election by an employee as long as the plan permits.

In this case, benefits were payable to Beneficiary H as a designated beneficiary at the date of Grantor's death and he began to receive distributions from IRA X on or before December 31, 1997. Accordingly, with respect to the first ruling request it is concluded that distributions to Beneficiary H will qualify for the exception to the five-year rule under section 401(a)(9)(B)(iii) of the Code.

Request two involves the application of the following state and Federal provisions:

<u>State Law</u>

Ind. Code Ann. § 32-3-2-2 (2000) provides:

> A person to whom an interest devolves by whatever means may disclaim the interest in whole or in part as provided in this chapter. A person's personal representative, guardian, or conservator may disclaim on behalf of the person.

Under Ind. Code Ann. § 32-3-2-6(a), a disclaimer of an interest that has devolved by means other than laws of intestacy, a testamentary instrument, a life insurance policy, an annuity, or as an interest in a joint tenancy, including an interest that has devolved under a nontestamentary instrument, is effective only if:

> the requirements of [§ 32-3-2-7] are accomplished not later than nine (9) months after the creation of the interest if a present interest is disclaimed,

Under Ind. Code Ann. § 32-3-2-6(b), unless provision has been made for another devolution. an interest disclaimed under § 32-3-2-6 devolves as if:

(1) The disclaimed interest had never been created in the disclaimant, if the disclaimant is a fiduciary; or

(2) The disclaimant had died immediately before the creation of the interest in all other cases.

A disclaimer under this section relates back for all purposes that relate to the interest disclaimed to the time immediately before the creation of the interest,

Under Ind. Code Ann. § 32-3-2-1, the "creation of the interest" occurs on the date on which the person creating the interest no longer has a power to determine by any means the recipient of the interest or of its benefits. Under Ind. Code Ann. § 32-3-2-7(a), a disclaimer under § 32-3-2-6 is only effective if delivered in person or mailed by first class United States mail to the holder of the legal title to the property to which the interest relates.

Federal Law

Section 2518(a) provides that, if a person makes a qualified disclaimer of an interest in property, the estate, gift, and generation-skipping transfer tax provisions will apply to that interest as if it had never been transferred to such person.

Under § 2518(b). the term "qualified disclaimer" means an irrevocable and unqualified refusal by a person to accept an interest in property, provided: (1) the disclaimer is in writing; (2) the disclaimer is received by the transferor of the interest, his legal representative, or the holder of legal title to the property, not later than the date which is 9 months after the later of the date on which the transfer creating the interest is made or the date on which the person refusing the interest attains age 21; (3) the person disclaiming the interest has not accepted the interest or any of its benefits; and (4) as a result of the disclaimer, the interest passes without any direction by the person making the disclaimer and passes either to the spouse of the decedent or to a person other than the person making the disclaimer.

Under § 25.2518-1(b), if a qualified disclaimer is made, the property is treated, for federal gift, estate, and generation-skipping transfer tax purposes, as passing directly from the transferor, not from the disclaimant, to the person entitled to receive the property as a result of the disclaimer. Thus, the disclaimant is not treated as making a gift.

Under § 25.2518-2(c)(1), the written disclaimer must be delivered no later than the date which is 9 months after the date on which the transfer creating the interest in the disclaimant is made. Section 25.2518-2(c)(l)(i) provides that the 9 month period for making the disclaimer is generally determined with reference to the transfer creating the interest in the disclaimant. With respect to transfers made by a decedent at death, or transfers that become irrevocable at death, the transfer creating the interest occurs at the date of death,

In the instant case, under Ind. Code Ann. § 32-3-2-6(b)(2), as a result of Beneficiary E's disclaimer, his interest in the IRA X passes as if he had died immediately before Grantor's date of death. In view of the terms of the beneficiary designation on the IRA adoption agreement, discussed above, as a result of Beneficiary E's disclaimer, Beneficiary E's interest in the IRA passed in equal shares to the other designated beneficiaries.

It is represented that Beneficiary E did not accept any benefits from IRA X before executing and delivering the disclaimer and that the written disclaimer was delivered to the appropriate party within 9 months of Grantor's date of death.

Accordingly, based on the facts submitted and representations made, we conclude that Beneficiary E's disclaimer executed on May 14, 1997, was a qualified disclaimer under § 2518. In accordance with 52518(a) and §25.2518-1(b) the disclaimed interest in IRA X is treated, for federal gift, estate, and generation-skipping transfer tax purposes, as passing directly from Grantor to Beneficiaries F, G, H, and I.

With respect to ruling request three, it is represented that the Beneficiaries of IRA X were timely designated and we have concluded that distributions timely commenced. It is also represented that Beneficiary F is the oldest beneficiary and that Beneficiaries calculated the required minimum distributions for 1997, 1998, 1999 and 2000 based on the life expectancy of Beneficiary F. In this regard, section 1.401(a)(9)-1 of the Proposed Regulations, Q&A-E-5(a)(l), provides, generally, 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. Thus, distributions to the Beneficiaries based on the life expectancy of Beneficiary F, (the oldest beneficiary and the one with the shortest life expectancy) equal or exceed the required minimum distributions.

Q&A-H-2(b) of Proposed Regulations section 1.401(a)(9)-1 provides, with respect to distributions under section 401(a)(9)(B)(iii) of the Code, that if as of an employee's death, the beneficiaries of a separate account in an individual account differ from the beneficiaries of other separate accounts in the individual account of the employee, such separate account need not be aggregated with other separate accounts in order to determine whether the distributions from such separate account satisfy section 401(a)(9). Instead, the rules in section 401(a)(9) may separately apply to such separate account. Thus, if the employee designated a different beneficiary for each separate account, each separate account may be distributed over the life or life expectancy of the designated beneficiary for that separate account.

Q&A-2(b) of the revised Proposed Regulations section 1.401 (a)(9)-8 provides with respect to distributions under section 401 (a)(9)(B)(iii) of the Code, that if as of the end of the year following the year containing the employee's date of death, the beneficiaries with respect to a separate account under the plan differ from the beneficiaries with respect to the other separate accounts of the employee under the plan, such separate account under the plan need not be aggregated with other separate accounts under the plan in order to determine whether the distributions from such separate account under the plan satisfy section 401(a)(9). Instead, the rules in section 401(a)(9) may separately apply to such separate account under the plan.

In this regard, Q&A-H-2(b) of Proposed Regulations section 1.401(a)(9)-1 and Q&A-2(b) of revised Proposed Regulations section 1.401 (a)(9)-8 provide that if the beneficiaries of a separate account under the plan differ from the beneficiaries of other separate accounts under the plan, the rules of section 401 (a)(9) may separately apply to such separate account under the plan. With respect to request three it is concluded that Grantor's beneficiary designation, naming his children in equal, discernable shares, created separate accounts as this term is defined under section 1.401 (a)(9)-1 Q&A H-2A and therefore, Beneficiary H may use his own life expectancy in calculating required minimum distributions for such beneficiary's respective account pursuant to section 1.401(a)(9)-1 Q&A H-2(b).

With respect to request four, section 408(d)(l) of the Code provides that except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan, including an IRA, shall be included in gross income by the payee or distributee in the manner provided under section 72. In this regard, the mere segregation into sub-accounts of the interests of multiple beneficiaries of an IRA by the trustee or custodian does not affect the status of the IRA under section 408 of the Code. Nor does the mere segregation of an IRA into sub-accounts result in taxable distributions as that term is used in section 408(d)(l). Accordingly, it is concluded that the creation of an equal sub-account for Beneficiary H did not affect the tax deferred status of funds in IRA X and the creation of such equal sub-account will not be treated as a taxable distribution.

With respect to request five, 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 treated as paid or distributed to the participant and such transfer does not constitute a rollover. Furthermore, the revenue ruling states that its conclusion will apply whether the transfer is initiated by the bank trustee or the IRA holder.

In this case, Beneficiary H is a beneficiary of Grantors IRA X. Beneficiary H intends to directly transfer, by means of trustee to trustee transfer, his portion of IRA X to a new IRA set up and maintained in the name of Grantor. It is assumed Beneficiary H will be the beneficiary of the transferee IRA.

The Service believes that Beneficiary H's proposed course of action complies with the language of Revenue Ruling 78-406. Thus, Beneficiary H may transfer his share of IRA X to a new IRA set up and maintained in the name of Grantor. Furthermore, since Beneficiary H has been timely designated as a beneficiary of Grantor's IRA X, Beneficiary H will be treated as the designated beneficiary of the transferee IRA. Finally, Revenue Ruling 78-406 does not require that the full amount standing in an IRA be transferred to one and only one IRA. Thus, Beneficiary H may transfer the portion of IRA X to which he is entitled without regard to whether the portions of IRA X of Beneficiaries F, G and I remain in IRA X or are transferred to new IRAs. Accordingly, with respect to request five, it is concluded that the trustee to trustee transfer of the existing IRA X sub-account maintained for the benefit of Beneficiary H to a new custodian, while maintaining title in the name of Grantor will not constitute a payment or distribution of taxable funds to Beneficiary H.

The above rulings are contingent upon the continuation of IRA X as one described under section 408 of the Code. It also assumes that the transferee IRA will also meet the requirements of section 408.

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

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

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The author of this ruling is who may be reached at (

Sincerely yours,

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

Enclosures:
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Form 437