

200410020



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEC -9 2003

UICs: 401.06-01
401.06-02

SET:EP:RA:T3

Attn:
Vice President

LEGEND:

Taxpayer A:

Taxpayer B:

Trustee C:

Taxpayer D:

Trust T:

Subtrust U:

Subtrust V:

Trustee W:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Page 2

Date 7:

Date 8:

Date 9:

IRA X:

Company M:

Company N:

State O:

Value 1:

Dear Ms. :

This is in response to the , request for letter rulings under section 401(a)(9) of the Internal Revenue Code submitted on your behalf by your authorized representative, as supplemented by correspondence dated . The request for letter rulings is based on the following facts and representations.

Taxpayer A, whose date of birth was Date 1, 1930, died on Date 2, 2001, at age 71 without having attained his required beginning date as that term is defined in Code § 401(a)(9)(C). As of his date of death, Taxpayer A was the owner of an individual retirement account, IRA X, maintained with Company M, a subsidiary of Company N. IRA X had an approximate value of Value 1 as of Taxpayer A's date of death.

At his death, Taxpayer A was a resident of State O.

Taxpayer A was survived by his wife, Taxpayer B, whose date of birth was Date 3, 1930. Taxpayer B died on Date 4, 2003.

Taxpayer A was also survived by a son, Taxpayer C, and a daughter, Taxpayer D. Taxpayers C and D were born on Date 5, 1959. Taxpayers C and D were alive as of the date of this ruling request.

On Date 6, 1964, Taxpayer A signed and adopted Trust T which was subsequently restated for the last time on Date 7, 1992. Trustee W is the trustee of Trust

T. Trust T is the beneficiary of Taxpayer A's IRA X as indicated on a beneficiary designation dated Date 9, 1991.

Your authorized representative asserts on your behalf that Trust T became irrevocable as of the death of Taxpayer A. Your authorized representative also asserts that Trust T is valid under the laws of State O.

Item XIII of Trust T provides, in relevant part, that upon the death of Taxpayer A, Trust T is to be divided into two sub-trusts, Subtrust U and Subtrust V. Subtrust V was to be funded, through a fractional formula clause, with the exemption equivalent in the year of Taxpayer A's death.

Item XIII, § 4, of Trust T mandates that all income of Subtrust V was to be distributed, not less frequently than quarterly, to Taxpayer B.

Item XIII, § 4, of Trust T also provides that Trustee W had the discretion to pay principal of Subtrust V to Taxpayer B as the trustee deemed necessary or desirable for her health, maintenance and support.

The provisions of Trust T provide, in relevant part, that all income of Subtrust U was to be distributed, not less frequently than annually, to Taxpayer B. The provisions of Trust T also provide, in relevant part, that Trustee W had the discretion to pay principal of Subtrust U to Taxpayer B as the trustee deemed necessary or desirable for her health, maintenance and support or because of an emergency, sickness or other need.

The provisions of Trust T further provide that, upon the death of Taxpayer B, the trustee of Subtrust U is authorized to pay to the Personal Representative of Taxpayer B's estate that amount which equals the sum of all additional death taxes payable by such Personal representative by reason of the inclusion of such trust in Taxpayer B's estate. Your authorized representative asserts that no taxes were due upon the death of Taxpayer B and no portion of the assets of Subtrust U has been, or will be, used for the payment of taxes or expenses.

The provisions of Trust T further provide, in relevant part, that, upon the death of Taxpayer B, whatever remains of Subtrust U will be merged with Subtrust V.

Under the terms of Item XIII of Trust T, upon the death of Taxpayer B, Subtrust V is to be distributed, in equal shares, to Taxpayer A's children free of trust as long as said children are over the age of 21. Taxpayers C and D were over the age of 21 at the death of Taxpayer B.

The provisions of Trust T also provide that the trustee thereof shall not distribute any IRA to or for the benefit of Taxpayer A's estate, any charity or any other non-individual beneficiary. In addition, any IRA shall not be used or applied for payment of Taxpayer A's debts, funeral expenses, estate administration expenses or other claims against Taxpayer A's estate, nor for the payment of estate, inheritance or similar transfer taxes due on account of his death.

With respect to calendar year 2002, required minimum distributions from IRA X were taken based on the life expectancy of Taxpayer B. The divisor of 15.5, which was based on Taxpayer B's age during 2002 of 72, was used with respect to 2002.

On Date 8, 2003, IRA X was divided and segregated into two, equal, separate accounts. One was set up as follows: "Trustee W, Trustee for Taxpayer C, beneficiary of Trust T, decedent IRA". The other was set up as follows: "Trustee W, Trustee for Taxpayer D, beneficiary of Trust T, decedent IRA".

Your authorized representative asserts that the documentation required under section 1.401(a)(9) of the Income Tax Regulations, Question and Answer-6, was provided to the IRA X trustee no later than October 31, 2002.

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

1. That Trust T is a qualified beneficiary (a valid "see-through trust") within the meaning of § 1.401(a)(9)-4 of the regulations, Question and Answer-5;
2. that the creation of equal IRAs and the in-kind distribution of a share of IRA X to the IRA set up for the benefit of Taxpayer D, as beneficiary of Trust T, did not affect the tax deferred status of said portion of IRA X; and
3. that all required distributions either from IRA X or from the two IRAs created as a result of the Date 8, 2003 division of IRA X may be paid over the remaining life expectancy of Taxpayer B. Said life expectancy is computed by using 15.5 as the divisor for calendar year 2002 and reducing 15.5 by one for each subsequent calendar year.

With respect to your ruling requests, 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, in general, that if a plan participant (IRA holder) dies before the distribution of his interest has begun in accordance with subparagraph (A)(ii) (prior to his required beginning date), then his entire interest must be distributed within 5 years of his death.

Code § 401(a)(9)(B)(iii) provides, in general, that if any portion of the interest of a deceased plan participant (IRA holder) is payable to (or for the benefit of a designated beneficiary), such portion will be distributed beginning not later than 1 year after the date of the deceased's death (or a later date as prescribed by the Secretary under Regulations) in accordance with regulations over the life of the designated beneficiary (or a period not extending beyond the life expectancy of the 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 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, provide that the regulations apply for determining required minimum distributions for calendar years beginning after January 1, 2003.

Section 1.401(a)(9)-3 of the "Final" regulations, Q&A-1, describes, in relevant part, the "life expectancy" exception to the 5-year rule.

Section 1.401(a)(9)-3 of the "Final" regulations, Q&A-3(a) provides, in general, that, with respect to the life expectancy exception to the 5-year rule described in Code § 401(a)(9)(B)(iii), and in A-1, distributions are required to begin to a non-spouse beneficiary on or before the end of the calendar year immediately following the calendar

year in which the employee died. Q&A-3(a) adds that this rule also applies to the distribution of the entire remaining benefit if another individual is a designated beneficiary in addition to the employee's (IRA holder's) surviving spouse.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-5(b), provides, in general, that if an employee dies before his required beginning date, in order to satisfy the requirements of Code § 401(a)(9)(B)(iii) or (iv) and the life expectancy rule described in A-1 of § 1.401(a)(9)-3, 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 a non-spouse 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 calendar years, the applicable distribution period 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)-5 of the "Final" regulations, Q&A-5(c)(2), provides, in general, that, with respect to a spouse who is the employee's sole beneficiary, the applicable distribution period is measured by the beneficiary's remaining life expectancy using the surviving spouse's birthday for each distribution calendar year after the calendar year of the employee's death up to the calendar year of the spouse's death. In subsequent calendar years, the applicable distribution period is the life expectancy of the spouse using the age of the spouse as of the spouse's birthday in the calendar year of the spouse's death reduced by one for each calendar year that has elapsed after the calendar year of the employee's death.

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 that there is no corpus.
- (2) The trust is irrevocable or the trust contains language to the effect it becomes 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) The documentation described in A-6 of this section has been provided to the plan administrator.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-6(b), provides, generally, with respect to required minimum distributions after the death of the employee, that documentation described therein must be provided by the trustee of the trust/beneficiary to the plan administrator by October 31 of the calendar year following the calendar year in which the employee died.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-5(c), provides, in relevant part, that the separate account rules under A-2 of § 1.401(a)(9)-8 are not available to beneficiaries of a trust with respect to the trust's interest in the employee's benefit.

Section 1.401(a)(9)-9 of the "Final" regulations provides the life expectancy and distribution period tables used to determine minimum required distributions. The Uniform Lifetime Table is the table to be used to determine the life expectancy of an individual. Pursuant to the Uniform Lifetime Table, the life expectancy of a individual age 72 is 15.5 years.

As noted above, if distributions are made to a trust, even if the trust is a "see-through" trust within the meaning of Q&A-5 of § 1.401(a)(9)-4 of the "Final" Regulations, the separate account rules of A-2 of § 1.401(a)(9)-8 of the "Final Regulations" are not available to the beneficiaries of the trust. Thus, in general, each beneficiary of a trust must receive minimum required distributions over the life expectancy of the eldest beneficiary.

We note in this case that, after the death of Taxpayer A, IRA X was subdivided into two equal IRAs. Said subdivision was accomplished pursuant to the terms of Trust T.

Although neither the Code nor the "Final" regulations promulgated under Code section 401(a)(9) preclude the posthumous division of IRA X into two IRAs, the "Final" regulations do preclude "separate account" treatment for Code § 401(a)(9) purposes where amounts pass through a trust. In this case, the IRA X amounts pass through Trust T. Thus, even though IRA X has been divided into two IRAs which were set up and designed to pay beneficiaries free of Trust T, the life expectancy of the eldest beneficiary of all of the IRAs, including the Trust T beneficiaries of IRA X, is the life expectancy to be used to determine the Code § 401(a)(9) payout period for distributions either from IRA X or from the IRAs created as result of the Date 8, 2003, division of IRA X. Taxpayer B is the said eldest beneficiary.

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

1. That Trust T is a qualified beneficiary (a valid "see-through trust") within the meaning of § 1.401(a)(9)-4 of the regulations, Question and Answer-5;
2. that the creation of equal IRAs and the in-kind distribution of a share of IRA X to the IRA set up for the benefit of Taxpayer D, as a beneficiary of Trust T, did not affect the tax deferred status of said portion of IRA X; and
3. that all required distributions either from IRA X or from the two IRAs created a result of the Date 8, 2003 division of IRA X may be paid over the remaining life expectancy of Taxpayer B. Said life expectancy is computed by using 15.5 as the divisor for calendar year 2002 and reducing 15.5 by one for each subsequent calendar year.

This ruling letter is based on the assumption that IRA X and the two IRAs created as a result of the Date 8, 2003 division of IRA X, either have met, are meeting, or will meet the requirements of Code § 408 at all times relevant thereto. It also assumes that Trust T, and the subtrusts created thereunder, are valid under the laws of State O as represented.

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
Manager, Employee Plans
Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose