



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200433019

MAY 21 2004

WLK: 401.00-00

SE:T:EP:PA:T3

LEGEND:

Taxpayer A:

Individual I:

IRA X:

IRA Y:

Trust T:

State S:

County C:

This is in response to the September 2, 2003, 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 January 4, 2004, and February 16 and 26, 2004 and March 4, 2004. The request for letter rulings is based on the following facts and representations.

Taxpayer A was born on _____ and died on _____ at the age of _____. At the time of his death, Taxpayer A was a resident of County C in State S. At the time of his death, Taxpayer A was survived by only one child, Individual I, the taxpayer requesting this ruling. Individual I was born on _____

Trust T was created by Taxpayer A, as trustor and trustee, on _____. By the terms of Trust T, Taxpayer A is the only person who had the power to terminate the trust. Trust T became irrevocable at the death of Taxpayer A. Your authorized representative asserts that Trust T is valid under the laws of State S, the state of Taxpayer

A's residence and the state designated in section 7.10 of Trust T as the state whose laws shall govern.

At the time of his death, Taxpayer A maintained IRA X and IRA Y. On Taxpayer A executed a beneficiary designation form for IRA X naming Trust T as the sole beneficiary. On Taxpayer A executed a beneficiary designation form for IRA Y naming Trust T as the sole beneficiary. Taxpayer A was unmarried at the time that the beneficiary designation forms were executed and remained unmarried up through the time of his death.

Section 5.02 of Trust T specifies the distributions to occur upon the death of the trustor, and after disposing of various tangible personal property, subsection B states:

Upon the death of the Trustor, the Trustee shall distribute the balance of the Trust Estate to the Trustor's child, free of trust, provided she survives the Trustor.

Individual I is Taxpayer A's only Child.

Under the law of State S the Trustee will distribute one hundred percent of IRA X and IRA Y "in kind" to Individual I free of trust.

Section 5.01 of Trust T states:

On the death of the Trustor, the Trustee, in the Trustee's discretion, may pay out of the Trust Estate debts of the Trustor, the estate and inheritance taxes, including interest and penalties arising because of the Trustor's death, the last illness and funeral expenses of the Trustor, attorneys' fees, and other costs incurred in administering the Trustor's probate estate.

Notwithstanding the foregoing, no such payments shall be made from funds received by the Trustee from qualified employees' benefit plans to the extent they qualify for exclusion from the taxable estate for estate tax purposes, or from assets which are exempt from creditor's claims under applicable federal and state law, and such funds shall not be used to satisfy any other obligations of the Trustor's estate.

No assets of IRAs X and Y have been used to pay any taxes, expenses of last illness or funeral, nor have they been used to pay any of the costs incurred in administering the Taxpayer A's probate estate or the expenses of Trust T.

Under section 704.115(e) of the Code of State S, funds in an IRA or private retirement plan are exempt to the extent necessary to provide for the support of the judgment debtor and for the support of the spouse and dependents of the judgment debtor, taking into account all resources that are likely to be available for the support of the judgment debtor when the judgment debtor retires.

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Given the fact that Taxpayer A had not reached retirement age, Individual I asks the Service to assume that State S courts would have ruled that IRAs X and Y were exempt from creditor claims under the preceding State S Code section. For purposes of this ruling request, the Service so assumes.

Copies of Trust T were provided to the administrator/custodian of IRAs X and Y prior to September 30, 2002.

Individual I has taken a required minimum distribution from Trust T for the year based on her life expectancy of as determined under the Single Life Table of section 1.401(a)(9)-9 of the Income Tax Regulations. She has also taken a required minimum distribution from Trust T for the year based on her life expectancy of The required minimum distribution for the year has not yet been taken.

On IRA X and IRA Y were re-titled as follows: Taxpayer A, Decedent IRA, Individual I, Beneficiary. No distributions were made from the IRAs in connection with the re-titling.

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

1. Trust T is a qualified beneficiary within the meaning of section 1.401(a)(9)-4, Question and Answer 5 of the Income Tax Regulations;
2. required minimum distributions from IRAs X and Y, received in 2002 and 2003 through Trust T, and required minimum distributions for 2004 and subsequent years, that will be made directly from IRAs X and Y to Individual I, may be calculated based on the life expectancy of Individual I. and
3. the transfer of Individual I's interest in Taxpayer A's IRAs to the re-titled IRAs will not constitute a taxable distribution within the meaning of section 408(d)(1) of the Code to Individual I and does not constitute a rollover as that term is used in section 408(d)(3).

With respect to your ruling requests, Code section 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.

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).

Code § 401(a)(9)(C) 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 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. For determining required distributions for calendar year taxpayers may rely on the 1987 proposed regulations, the 2001 proposed regulations, or the "Final" Regulations..

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.

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)-4 of the "Final" regulations, Q&A-1, provides, in relevant part, that a designated beneficiary is an individual who is designated as a beneficiary under a plan either by the terms of the plan or by an affirmative election by the employee. Q&A-1 further provides that a person who takes under a will or otherwise under applicable state law will not be a designated beneficiary unless that individual also takes under a plan.

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 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 section 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.

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Section 1.401(a)(9)-9 of The "Final" Regulations sets down the life expectancy tables to be used to determine minimum required distributions. Q&A-1 sets down the "Single Life Table". Pursuant to the Single Life Table, the life expectancy of an individual aged 43 is 40.7 years.

As previously noted, taxpayers must compute minimum required distributions for calendar years beginning with calendar year in accordance with the "Final" regulations referenced above. Distributions for calendar year may also be made in accordance with the "Final" regulations

In this case, with respect to the first and second ruling requests, although the provisions of Trust T authorize the payment of funeral, burial and administrative expenses associated with the death of Taxpayer A, the above referenced State S statute precludes IRA assets from being used to pay said expenses. Thus, Trust T assets other than IRAs X and Y, by law, had to be used to pay any taxes, expenses of last illness or funeral, costs incurred in administering Taxpayer A's probate estate or the expenses of Trust T

After careful consideration of the facts in this case, we believe that it is appropriate to treat said fact pattern as coming within section 1.401(a)(9)-4 of the "Final" regulations, Q&A-4(a). Because, on the only remaining beneficiary of Trust T was Individual I, only the life expectancy of Individual I must be considered to determine which is the life expectancy that must be used to calculate minimum required distributions from IRA's X and Y to Trust T and the beneficiary thereof.

Further, in accordance with 1.401(a)(9)-4 of the "Final" regulations, Q&A-5, the following requirements are met:

- (1) Trust T is valid under the law of State S.
- (2) Trust T became irrevocable upon the death of Taxpayer A.
- (3) Individual I is identifiable as the beneficiary with respect to Trust T's interest in the IRAs X and Y within the meaning of A-1 of 1.401(a)(9)-4 of the "Final" regulations.
- (4) Copies of Trust T were provided to the administrator/custodian of IRAs X and Y prior to September 30, 2002.

With further respect to your second ruling request, Taxpayer A's beneficiary designation(s) provided that his IRAs X and Y were to be paid at his death to his Trust T for the benefit of Individual I, the beneficiary thereof. As beneficiary of Trust T, which is a "see-through trust" within the meaning of section 1.401(a)(9)-4 of the "Final" Regulations, Q&A-5, Individual I may receive distributions from IRAs X and Y, through Trust T, over her life expectancy. The issue to be resolved is whether she may continue

to do so after IRAs X and Y were transferred to IRAs set up and maintained in the name of Taxpayer A (Deceased) to benefit Individual I directly without regard to Trust T:

With regard to this question, we note that the provisions of Taxpayer A's Trust T authorize payment of trust property, including IRAs X and Y, directly to Individual I without regard to Trust T. Thus, said payment conforms with Taxpayer A's intent. We also note that, prior to the March 4, 2004, action(s) referenced above, required distributions from IRAs X and Y were being made over Individual I's life expectancy in accordance with the requirements of Code sections 401(a)(9), and 408(a)(6) and the "Final" Regulations promulgated thereunder. After the March 4, 2004, action(s), required distributions will continue to be made using Individual I's life expectancy. Thus, Individual I's ceasing to use Trust T as a conduit for her payments from IRAs X and Y will affect neither the amount nor the timing of required distributions therefrom.

Thus, with respect to your first and second ruling requests, based on the specific facts and representations surrounding this ruling request, we conclude as follows:

1. Trust T is a qualified beneficiary within the meaning of section 1.401(a)(9)-4 Question and Answer 5, of the Income Tax Regulations and
2. required minimum distributions from IRAs X and Y, received in and through Trust T, and required minimum distributions for and subsequent years, that will be made directly from IRAs X and Y to Individual I, may be calculated based on the life expectancy of Individual I. and

With respect to ruling request three, 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 (or beneficiary of a deceased IRA holder), does not constitute a payment or distribution to a participant, payee, or distribute as those terms are used in Code section 408(d). Furthermore, such a transfer does not constitute a rollover distribution and contribution. Thus, based on the facts and representations surrounding this ruling request, we conclude as follows:

3. the transfer of Individual I's interest in Taxpayer A's IRAs to the re-titled IRAs will not constitute a taxable distribution within the meaning of section 408(d)(1) of the Code to Individual I and does not constitute a rollover as that term is used in section 408(d)(3).

This ruling letter is based on the assumption that IRAs X and Y either met or meet the requirements of Code section 408 at all times relevant thereto. It also assumes that the retitled IRAs created on meet the requirements of Code section 408 at all times relevant thereto. Furthermore, it assumes that the law of State S precludes creditor claims against IRAs X and Y as represented. Finally, it assumes that Trust T is valid under the laws of State S as represented.

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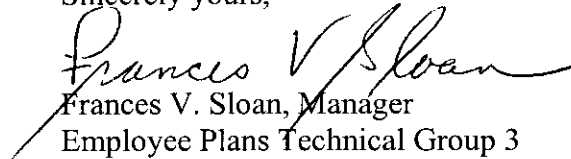
Pursuant to a power of attorney on file with this office, the original of this letter ruling is being sent to one of your authorized representatives and a copy of this letter ruling is being sent to another of your authorized representatives.

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.

The author of this letter is
reached at .

SE:T:EP:RA:T3 who may be

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

- Deleted copy of ruling letter
- Notice of Intention to Disclose