



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

200616040

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JAN 25 2006

UICs: 401.06-00
401.06-02
408.06-00

T:EP:RA:T3

LEGEND:

Decedent	=
Wife	=
Daughter 1	=
Daughter 2	=
Company 1	=
Company 2	=
State	=
County	=
Court	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
IRA X	=

Dear :

This is in response to the , letter, as supplemented by correspondence dated , in which you, through your authorized representative, request a letter ruling under sections 408 and 401(a)(9) of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request.

FACTS:

On Date 1, , Decedent, a resident of State, opened an IRA with Company 1. The IRA agreement designated his wife, Wife, as the primary beneficiary and Daughters 1 and 2 as

contingent beneficiaries of the IRA in the event Wife did not survive Decedent. Subsequently, Decedent transferred all of the assets from the Company 1 IRA to an IRA established with Company 2, which Decedent opened on Date 2, . Under the Company 2 agreement, Wife was designated as the primary beneficiary of the Company 2 IRA. However, no contingent beneficiaries were designated under the agreement.

Decedent died testate on Date 3, . Wife died shortly thereafter on Date 4, . Article Fifth of Decedent's will provides, in relevant part, that in the event that Wife does not survive Decedent or if Wife dies within sixty days of Decedent, the rest, residue, and remainder of Decedent's estate is to pass to Decedent's two daughters, in equal shares, per stirpes. On Date 5, , within nine months of Decedent's death, Daughter 1, in her capacity as personal representative of Wife's estate, disclaimed each and every interest which Wife or her estate had in the Company 2 IRA.

On Date 6, , Court entered an order reforming the beneficiary designation of the Company 2 IRA nunc pro tunc as of Date 2, , (the date the IRA was opened). Under the beneficiary designation, as reformed, Daughters 1 and 2 were designated as the contingent beneficiaries of the Company 2 IRA (as was the case with respect to the Company 1 IRA). The order also approved the disclaimer of Wife's interest in the Company 2 IRA. The disclaimer was executed, approved by the Probate Court, received by the personal representative of Decedent's estate and recorded in the public records of County within nine months after the date of Decedent's death. The taxpayer has submitted an affidavit from the individual who assisted Decedent in establishing the Company 2 IRA. The affiant states that Decedent advised the affiant that the Company 2 IRA was to have the same beneficiaries as the Company 1 IRA. However, his instructions were not implemented and Daughter 1 and Daughter 2 were not designated as contingent beneficiaries.

The taxpayer represents that neither Wife nor her estate had made any voluntary assignment of or transfer of, contract to assign or transfer, or encumbrance of, given a written waiver of the right to disclaim the succession to and any interest in, and had not made any sale or other disposition of an interest in the IRA. Furthermore, neither Wife nor her estate had accepted the IRA or any interest in the IRA.

Subsequent to the disclaimer referenced above, Company 2, as trustee of the Company 2 IRA, divided, by means of trustee to trustee transfers, said Company 2 IRA into two sub-IRAs including IRA X which is titled "Decedent fbo Daughter 2". Under the terms of IRA X, required minimum distributions within the meaning of Code section 401(a)(9) are to be computed using the life expectancy of Daughter 1.

Daughter 1's date of birth was Date 7, , and Daughter 2's date of birth was Date 8, . Thus, Daughter 1 is older than Daughter 2.

RULINGS REQUESTED:

1. That the life expectancy of Daughter 1 may be used to determine the Code section 401(a)(9) minimum required distributions from IRA X; and
2. that the creation of IRA X by means of a trustee-to-trustee transfer did not result in a taxable distribution to Daughter 2 because of the operation of Revenue Ruling 78-406.

LAW AND ANALYSIS:

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 Code 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 section 401(a)(9)(B)(i) provides, in general, that if a plan participant (IRA holder) dies after the distribution of his interest has begun in accordance with subparagraph (A)(ii) (after his required beginning date), his plan or IRA interest remaining at his death must be distributed at least as rapidly as under the method of distribution being used under subparagraph (A)(ii) as of the date of his death.

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. Consequently, any person who was a beneficiary as of the date of the employee's death, but is not a beneficiary as of that September 30 (e.g. because the person receives the entire benefit to which the person is entitled before that September 30) is not taken into account in determining the employee's designated beneficiary for purposes of determining the distribution period for required minimum distributions after the employee's death. Accordingly, if a person disclaims entitlement to the employee's benefit pursuant to a disclaimer that satisfies § 2518 by that September 30 thereby allowing other beneficiaries to receive the benefits in lieu of that person, the disclaiming person is not taken into account in determining the employee's designated beneficiary.

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 as long as certain requirements are met.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-5(a) provides, in summary, that if an employee dies on or after 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 either—(1) If the employee has a designated beneficiary as of the date determined under A-4 of § 1.401(a)(9)-4, the longer of—

(i) the remaining life expectancy of the employee's designated beneficiary determined in accordance with paragraph (c)(1) or (2) of this A-5; and

(ii) the remaining life expectancy of the employee determined in accordance with paragraph (c)(3) 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 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-7, provides, in general, that if more than one beneficiary is designated as a beneficiary by an employee as of the applicable date for determining the designated beneficiary under A-4 of § 1.401(a)(9)-4, the beneficiary with the

shortest life expectancy will be the designated beneficiary for purposes of determining required distributions.

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 section 401(a)(9). Instead, the rules in Code section 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.

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

Code section 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, Daughters 1 and 2 are Decedent's children.

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 section 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 section 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 beneficiary accomplishing such a post-death trustee to trustee need not be the surviving spouse of a deceased IRA holder.

Neither the Code nor the "Final" regulations promulgated under Code section 401(a)(9) preclude the posthumous division of an IRA into more than one IRA.

In this case, as noted above, in a separate letter ruling the Service has concluded that the disclaimer referenced herein is valid within the meaning of Code section 2518(b). Furthermore, that ruling letter concluded that, because of the validity of the disclaimer, Wife is treated as having predeceased Decedent. Thus, Decedent's Company 2 IRA passed to Decedent's contingent beneficiaries, Daughters 1 and 2. As noted above, Daughter 1 is older than Daughter 2.

As indicated previously, Decedent's Company 2 IRA was subdivided into 2 sub-IRAs, each titled in the name of the Decedent. One of the two sub-IRAs, IRA X, was set up to benefit Daughter 2. Furthermore, in accordance with Rev. Rul. 78-406, the division of Company 2 IRA did not result in a distribution to Daughter 2 of her equal share of Decedent's Company 2 IRA.

CONCLUSIONS:

Accordingly, based on the facts presented and the representations made, we conclude with respect to your ruling requests that:

1. That the life expectancy of Daughter 1 may be used to determine the Code section 401(a)(9) minimum required distributions from IRA X;
2. that the creation of IRA X by means of a trustee-to-trustee transfer did not result in a taxable distribution to Daughter 2 because of the operation of Revenue Ruling 78-406.

This ruling letter is based on the assumption that the IRAs referenced herein either were or are valid within the meaning of Code section 408 at all times relevant thereto. It also assumes the correctness of all facts and representations contained therein.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.


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

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

200616040

If you wish to inquire about this ruling, please contact _____, Esq. (I.D. # _____), at _____ . Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of letter ruling
Notice 437