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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAY 12 2004

UICs: 401.06-00
401.06-02

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Taxpayer D:

Trust T:

Bank U:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Year 1:

Year 2:

Year 3:

IRA X:

Sum 1:

Sum 2:

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Sum 3:

Sum 4:

Sum 5:

Sum 6:

Sum 7:

State N:

Dear Ms. :

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

Taxpayer A, died on Date 1, 2002 at age 63 while residing in State N. As of his date of death, Taxpayer A was the owner of an individual retirement arrangement, IRA X. Bank U is the trustee and custodian of IRA X. IRA X had a value of approximately Sum 1 as of the date of Taxpayer A's death.

Taxpayer A was divorced as of the date of his death. Taxpayer A was survived by three children, Taxpayers B, C, and D. Taxpayer B was born in Year 1; Taxpayer C was born in Year 2; and Taxpayer D was born in Year 3. Taxpayer B is the eldest surviving child of Taxpayer A. Taxpayers B, C, and D were alive as of the date of this ruling request.

On Date 3, 1999, Taxpayer A named the trustee(s) of Trust T as the beneficiary (ies) of his IRA X. Bank U was, and remains, the trustee of Trust T.

Trust T was signed and adopted by Taxpayer A on Date 2, 1993. On Date 3, 1999, Taxpayer A amended and restated Trust T in its entirety.

As of the date of Taxpayer A's death, Trust T held, or was entitled to hold, no assets other than IRA X.

Trust T, in pertinent part, provides that, assuming Taxpayer A was either not survived by his spouse, or was not married to her at his death, the remaining trust estate,

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if any, was to be distributed by the trustee of Trust T in equal shares to Taxpayer A's issue, per stirpes.

Paragraph 2 of Article II of Trust T provides, in relevant part, that upon the death of Taxpayer A, the trustee of Trust T shall pay from the principal of the trust estate the expenses of the last illness and the funeral and burial expenses of Taxpayer A, as well as the probate administration expenses and estate taxes to the extent that the probate estate is insufficient to cover these items.

As of the date of this ruling request, the trustee of Trust T had withdrawn Sum 2 from IRA X to pay estate and administration expenses attributable to Taxpayer A's death. The Trust T trustee also withdrew Sum 3 from IRA X to pay Trust T's administration expenses, and approximately Sum 4 for the payment of estate taxes.

Additionally, as of September 30, 2003, the trustee of Trust T also

1. withdrew Sum 5 from IRA X which was then paid to the personal representative of Taxpayer A's estate and which was intended to fully cover any additional probate administration expenses (other than additional Federal estate taxes);
2. withdrew Sum 6 from IRA X which amount represented the estimated amount of income taxes attributable to withdrawals from IRA X.

After September 30, 2003, only trust related expenses may be paid from assets held by Trust T. Specifically, the trustee asserts that trust related expenses are: trustee fees; investment management fees; attorney's fees for services provided to the trustee.

With regard to estate taxes, your authorized representative asserts that the Federal Form 706 associated with the estate of Taxpayer A was timely filed on Date 4, , a date before , and all Federal and state estate taxes believed to be due were paid on the same date. On or about Date 5, , the personal representative of Taxpayer A's estate filed a claim for refund in the amount of Sum 7. As of the date of the most recent correspondence associated with the ruling request, the personal representative has received neither the estate tax return closing letter from the Service nor any correspondence from the Service that the Form 760 associated with Taxpayer A's estate has been chosen for audit. If additional estate taxes are determined to be due, said taxes will be paid from estate assets other than Trust T assets (i.e. IRA X). Trust T assets will be used only after all other estate assets have been depleted. In this regard, your authorized representative asserts that such payment is required by Code section 6324(a)(2).

Your authorized representative has asserted on your behalf that, after receipt of the Service closing letter, IRA X will be subdivided, by means of trustee to trustee transfers, into three sub-IRAs. Each of the sub-IRAs will be set up and maintained in the name of Taxpayer A. One of the sub-IRAs will be set up to benefit Taxpayer B, as beneficiary of Taxpayer A (deceased); the second sub-IRA will be set up to benefit Taxpayer C, as beneficiary of Taxpayer A (deceased); and the third sub-IRA will be set up to benefit Taxpayer D, as beneficiary of Taxpayer A (deceased). As of September 30, 2003, said subdivision had not occurred.

Your authorized representative has asserted on your behalf that Trust T is valid under the laws of State N, and that Trust T became irrevocable at the death of Taxpayer A. Furthermore, your authorized representative has asserted that there will be compliance with the requirements of § 1.401(a)(9)-4 of the "Final" Income Tax Regulations, Question and Answer-6.

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

1. That, for purposes of Code § 401(a)(9), Taxpayers B, C, and D may be considered the sole beneficiaries of Taxpayer A's Trust T. Furthermore, Taxpayers B, C, D, are the only individuals or entities who need be considered for purposes of determining who is the "designated beneficiary", for purposes of Code § 401(a)(9) of Taxpayer A's IRA X;
2. that, for purposes of Code § 401(a)(9) minimum required distributions, Taxpayer A's Trust T is a "see-through" trust as that term is defined in the "Final" Income Tax Regulations; and
3. that, for Code § 401(a)(9) purposes, Taxpayer B's life expectancy may be used to determine minimum required distributions both from the remainder of IRA X to Trust T and from the sub-IRA to be created in the name of Taxpayer A for the benefit of Taxpayer B, as beneficiary of Taxpayer A (deceased). Payments from said sub-IRA will be made directly to Taxpayer B free of Trust T.

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.

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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 summary, that a trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), the entire interest of the employee will be distributed within 5 years after the death of the employee.

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)-4 of the "Final" regulations, Q&A-4(a), 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-4(a) further provides, in relevant part, that any person who was a beneficiary as of the date of the employee's death but who is not a beneficiary as of that September 30 (e.g. because the person receives the entire benefit to which he 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 after the employee's death.

The rule in section 1.401(a)(9)-4 of the "Final" regulations, Q&A-4(a) applies to amounts distributed from either a qualified plan or an IRA which pass through a valid "see-through" trust.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-7(a)(1) provides, that, except as otherwise provided in paragraph (c) of this A-7 (not pertinent to this ruling request), if more than one individual is designated as a beneficiary with respect to an

employee as of the applicable date, the designated beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the applicable distribution period.

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

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.

With respect to your ruling requests, as noted above, Trust T is valid under the laws of State N, Trust T became irrevocable as of the date of death of Taxpayer A, the beneficiaries of Trust T are identifiable from the language of Trust T, and the relevant documentation was provided to the custodians of Taxpayer A's IRA X by the date required under the "Final" regulations.

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 will be subdivided into three equal IRAs including one set up for the benefit of Taxpayer B as the beneficiary of Taxpayer A (deceased). The IRA that will be set up to benefit Taxpayer B will be designed to pay distributions directly to Taxpayer B free of Trust T. Said design will be accomplished pursuant to the terms of Trust T.

Although neither the Code nor the "Final" regulations promulgated under Code § 401(a)(9) preclude the posthumous division of IRA X into three IRAs, the "Final" regulations do preclude "separate account" treatment for Code § 401(a)(9) purposes where amounts pass through a trust. In this case, initially, the IRA X amounts pass through Trust T. Thus, even though IRA X will be divided into three IRAs which will be set up and designed to pay beneficiaries free of Trust T, the life expectancy of the eldest

beneficiary of all of the IRAs, or, in other words, the beneficiary with the shortest life expectancy, 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 from the IRA set up and maintained to benefit Taxpayer B.

With further respect to your ruling requests, the issues to be resolved are whether, under the "Final" regulations, only Taxpayers B, C, and D must be considered in determining whose life expectancy is the shortest and, as a result, who is the "designated beneficiary" for purposes of determining required distribution from IRA X and from the three IRAs, including the IRA set up to benefit Taxpayer B, created after the death of Taxpayer A. In this regard, we note that amounts sufficient to pay then known expenses and taxes associated with Taxpayer A's death and with his estate were withdrawn from IRA X no later than September 30, 2003. Additional amounts will be used to pay estate taxes only if there is a determination that additional estate taxes are due and there are no remaining assets of the estate to pay the taxes.

After careful consideration of the facts in this case, we believe that it is appropriate to treat said fact pattern as coming within §1.401(a)(9)-4 of the "Final" regulations, Q&A-4(a). Because, on September 30, 2003, the only remaining beneficiaries of Trust T were Taxpayers B, C, and D, only the life expectancies of Taxpayers B, C, and D must be considered to determine which is the life expectancy that must be used to calculate minimum required distributions from IRA X to Trust T and the beneficiaries thereof. The use of Trust T assets to pay expenses associated with the administration of Trust T (in effect, expenses associated with the administration of the Trust T assets for the benefit of Taxpayers B, C, and D) or the possibility, under these facts, that Trust T assets may be required to be used to pay any estate taxes due, in addition to the amount reported on Form 706, does not change this conclusion.

As noted above, the final issue raised in this ruling request is whether the conclusion, above, continues to apply where IRA distributions are made directly to a beneficiary of Trust T outside of the trust when such direct distribution is authorized under the terms of the trust.

In this case, Trust T was the named beneficiary of Taxpayer A's IRA X. Pursuant to the terms of Trust T, IRA X will be subdivided and distributions from the three sub-IRAs created out of Taxpayer A's IRA X will be made directly to the beneficiaries thereof, specifically Taxpayers B, C and D. Thus, 1/3 of Taxpayer A's IRA X will be paid directly to Taxpayer B free of, and not through, Trust T.

In the absence of the subdivision of IRA X into three sub-IRAs, distributions from IRA X would continue to be made to Trust T, a valid, conduit, see-through trust, over the

life expectancy of Taxpayer B. Upon distribution to Trust T, IRA X amounts would then be used for the benefit of Taxpayers B, C, and D, beneficiaries of said Trust T.

After subdivision of IRA X into three sub-IRAs, one of which is for the benefit of Taxpayer B, distributions from the sub-IRAs will be made directly to Taxpayers B, C, and D, the same individuals who were the beneficiaries of IRA X and who were receiving amounts due them through Trust T, a valid, conduit, "see-through" trust, over the same life expectancy that was used to determine the amount of distributions to Trust T, i.e. the life expectancy of Taxpayer B.

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

1. That, for purposes of Code § 401(a)(9), Taxpayers B, C, and D may be considered the sole beneficiaries of Taxpayer A's Trust T. Furthermore, Taxpayers B, C, D, are the only individuals or entities who need be considered for purposes of determining who is the "designated beneficiary", for purposes of Code § 401(a)(9) of Taxpayer A's IRA X.
2. That, for purposes of Code § 401(a)(9), 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; and
3. that for Code § 401(a)(9) purposes, Taxpayer B's life expectancy may be used to determine minimum required distributions both from the remainder of IRA X and from the sub-IRA to be created in the name of Taxpayer A for the benefit of Taxpayer B, as beneficiary of Taxpayer A (deceased). Payments from said sub-IRA will be made directly to Taxpayer B free of Trust T.

This ruling letter is based on the assumption that IRA X and the IRA created after the death of Taxpayer A for the benefit of Taxpayer B, as beneficiary thereof, either have met, are meeting, or will meet the requirements of Code § 408 at all times relevant thereto. It also assumes that Trust T is valid under the laws of State N 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.

Any questions regarding this letter ruling should be addressed to:
(), whose phone number is:

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Frances V. Sloan".

Frances V. Sloan
Manager, Employee Plans
Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose