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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUN 28 2005

Uniform Issue List: 401.06-00
401.06-02
408.00-00

SE:T:EP:RA:T3

LEGEND:

Taxpayer A = ***

Taxpayer B = ***

Taxpayer C = ***

Taxpayer D = ***

Company G = ***

Company H = ***

State I = ***

Amount J = ***

Trust T = ***

Subtrust U = ***

IRA X = ***

Section Z: = ***

Dear ***:

This is in response to the September 8, 2004 request for a letter ruling under section 401(a)(9) of the Internal Revenue Code ("Code") submitted on your behalf by your authorized representative, as supplemented by correspondence dated April 7, 2005, April 19, 2005 and May 26, 2005. The request for letter rulings is based on the following facts and representations:

Taxpayer A, whose date of birth was ***, died on *** at age 64 not having attained her "required beginning date" as that term is defined in Code section 401(a)(9)(C). As of her date of death, Taxpayer A was the owner of IRA X maintained with Company G, with an approximate value of Amount J.

On ***, Taxpayer A signed and adopted Trust T. Article FT of Trust T provides for the creation of Subtrust U, for the benefit of her three children, Taxpayer B, Taxpayer C, and Taxpayer D.

Taxpayer C's date of birth was ***. Taxpayer C is older than Taxpayers B and D. Company H is the Trustee of Trust T.

The provisions of Trust T, as amended on *** and ***, provide, in relevant part, that Subtrust U became irrevocable upon the death of Taxpayer A and that Trust T is intended to be the beneficiary of an individual retirement arrangement (IRA X) maintained by Taxpayer A. Taxpayer A executed a beneficiary designation form on *** naming Trust T as the sole beneficiary of her IRA X.

Article DTE.03 of Trust T provides, in summary, that, after the death of Taxpayer A, Trustee shall, subject to the provisions of Section DTE.02, distribute the rest of the Divisible Trust Estate to the trusts established herein.

Article FT.02 of Trust T provides that the Trustee shall divide the trust estate into equal shares and distribute his or her share to the beneficiary upon Taxpayer A's death. Taxpayers B, C, and D have continuously been the beneficiaries of Trust T from the death of Taxpayer A through the current date and each was alive as of the date of this ruling request (as supplemented). According to Section Z of State I law, the funds within an individual retirement account are listed as being exempt from creditors of the estate. Therefore, pursuant to State I law, there are no beneficiaries under Trust T that are not identifiable, and that are not eligible individual "designated beneficiaries" as that term is defined in section 1.401(a)((9)-4 of the "Final" Regulations, Questions and Answers 3 and 4.

On ***, Company H, the trustee of Trust T, signed a consent form with respect to the IRA X account to permit the IRA X account balance to be distributed directly to the three beneficiaries of Trust T in equal shares, in lieu of distributing IRA X to Trust T followed by distributing the proceeds to the three beneficiaries in equal shares according to the terms of its associated Subtrust U. This consent was executed to avoid unnecessary administration and expense. Your authorized representative has asserted on your behalf that such action is consistent with the laws of State I.

Your authorized representative has asserted that Trust T, and its associated Subtrust U, is valid under the laws of State I. He has also asserted that Company G, as the IRA X Administrator was provided with a copy of Trust T and of the related beneficiary designations prior to October 30 of the calendar year following the calendar year of the death of Taxpayer A.

The Trustee of Trust T intends to subdivide IRA X into three sub-IRAs by means of a series of trustee-to-trustee transfers. Each posthumously created sub-IRA is to be titled in the name of Taxpayer A (Deceased) for the benefit of each distinct beneficiary, and minimum required distributions for each sub-IRA will be determined on the basis of the age of the oldest beneficiary. Each sub-IRA will then be held, individually, as beneficiary, by a separate one of the three beneficiaries outside of Trust T.

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

That IRA X may be subdivided into three sub-IRAs such that each sub-IRA will be created and held, individually, by a separate beneficiary in the name of Taxpayer A (Deceased) for the benefit of such beneficiary and with minimum required distributions under section 401(a)(9) of the Code for each sub-IRA being determined on the basis of the age, and life expectancy, of the oldest beneficiary, Taxpayer C.

With respect to your ruling request, 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.

Section 401(a)(9)(A) of the Code 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)(B)(ii) of the Code 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.

Section 401(a)(9)(B)(iii) of the Code 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 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 request, "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 on or after January 1, 2003. For determining required distributions for calendar year 2002, 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 section 401(a)(9)(B)(iii), distributions are required to begin to a nonspouse 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 section 401(a)(9)(B)(iii) or (iv), the applicable distribution period for calendar years after the 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 nonspouse 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, 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 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 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.

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 section 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.

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 section 1.401(a)(9)-4 of the "Final" Regulations, the separate account rules of A-2 of section 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.

With respect to the issue raised in this ruling request of which Trust T beneficiaries must be considered in determining who is the designated beneficiary of IRA X, Trust T effectively "walls off" IRA X from being used to pay Taxpayer A's creditors through provisions found in State I statutes. Thus, only the three children of Taxpayer A must be considered for purposes of determining who is the designated beneficiary of IRA X.

Furthermore, although neither the Code nor the regulations promulgated under Code section 401(a)(9) preclude the posthumous division of IRA X into three sub- IRAs or the distribution of such IRAs from a trust to the trust's beneficiaries, the regulations do preclude "separate account" treatment for Code section 401(a)(9) purposes where amounts pass through a trust. In this case, the distribution of IRA X amounts are subject to the terms of Trust T and its associated Subtrust U. Thus, even though IRA X will be divided into three sub-IRAs, the life expectancy of the oldest beneficiary of all of the sub-IRAs, Taxpayer C, is the life expectancy to be used to determine the Code section 401(a)(9) minimum required distributions from each of the resulting sub-IRAs.

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

1. That Trust T, and its associated Subtrust U, is a valid "see-through" trust, as that concept exists under the “Final” Regulations promulgated under section 401(a) (9) of the Code.

2. That IRA X may be subdivided into three sub-IRAs such that each sub-IRA will be created and held, individually, by a separate beneficiary of Trust T in the name of Taxpayer A (Deceased) for the benefit of such beneficiary and with minimum required distributions under section 401(a)(9) of the Code for each sub-IRA being determined on the basis of the age, and life expectancy, of the oldest beneficiary, Taxpayer C.

This ruling letter is based on the assumption that IRA X and all sub-IRAs have met, are meeting, or will meet the requirements of Code section 408 at all times relevant thereto. It also assumes that Trust T, and the creation of sub-IRAs as defined herein, are valid under the laws of State I as represented.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

This letter is directed only to the taxpayers that requested it and is based solely on the representations made with respect thereto. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact *** at either *** or ***. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of this letter
Notice of Intention to Disclose, Notice 437