



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

200610027

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UICs: 401.06-01
401.06-02

DEC 13 2005

SE: T: EP: RA: T3

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Taxpayer D:

IRA X:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

State A:

State B:

Trust W:

Subtrust X:

Company A:

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Dear [REDACTED]:

This is in response to the [REDACTED], letter, submitted by your authorized representative, as supplemented by correspondence dated [REDACTED], and [REDACTED], in which you (Taxpayer B) request letter rulings concerning the application of section 401(a)(9) of the Internal Revenue Code ("Code") (made applicable to an IRA under Code section 408(a)(6)) to the following facts and representations that your authorized representative asserts support your ruling request. .

Taxpayer A, whose date of birth was Date 1, 1941, died on Date 2, 2004, a resident of State A, without having attained age 70 ½. At his death, Taxpayer A owned IRA X with Company A. It has been represented that IRA X meets the requirements of Code section 408(a).

Taxpayer A was survived by one child, Taxpayer B, whose date of birth was Date 4, 1967, and a grandson, Taxpayer C, whose date of birth was Date 5, 1998. Taxpayer C is Taxpayer B's son. Taxpayer B is married to Taxpayer D, whose date of birth was Date 6, 1972, and who is the mother of Taxpayer C.

On Date 3, 1993, Taxpayer A entered into and approved a declaration of trust, Trust W (as amended). Trust W was/is subject to the laws of State B. It has been represented that Trust W became irrevocable at the death of Taxpayer A. Additionally, it has been represented that a copy of Trust W, which contains the language of Subtrust X, as amended, has been provided to Company A through Taxpayer A's broker.

At the death of Taxpayer A, Taxpayer B became sole trustee of Trust W. Prior to his death, Taxpayer A named Trust W the sole, primary beneficiary of his IRA X.

Section 6.01 of Trust W provides, in relevant part, that, upon the death of Taxpayer A, Trust W shall terminate and the trustee then in office shall distribute the trust estate in equal shares to Taxpayer B and Taxpayer C if they survive Taxpayer A for a period of sixth (60) days. Taxpayers B and C survived Taxpayer A by the requisite 60 days.

It has been represented on your behalf that, under the laws of State B, the interest of Taxpayer B in the Trust W property, including IRA X, vested at the death of Taxpayer A with possession thereof deferred until Taxpayer B had survived Taxpayer A by the requisite 60 days.

Section 6.02 of Trust W created Subtrust X to benefit any beneficiary of Trust W who has not attained age 18. Section 6.02(a) of Trust W provides that "the Trustee shall pay to or apply for the benefit of the beneficiary the entire net income of the beneficiary's trust at regular intervals. If the Trustee deems the income to be insufficient, the Trustee shall also pay to or apply for the beneficiary as much of the principal of the beneficiary's trust as the Trustee deems necessary for the beneficiary's support, care, maintenance and education after taking into consideration any income or resources of the beneficiary known to Trustee".

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Section 6.02B of Trust W provides that "When the beneficiary attains the age of 25, the Trustee shall distribute to the beneficiary the undistributed balance of the trust". Taxpayer B had attained age 25 prior to the death of Taxpayer A.

Section 6.01F of Trust W provides that "If any beneficiary of the trust estate dies before receiving full distribution of his or her interest in the trust estate, the balance of that beneficiary's interest shall be distributed to his or her heirs according to the laws of State B in effect relating to succession of property".

It has been represented that, pursuant to the laws of State B, Taxpayers B and D, his parents, are Taxpayer C's heirs at law.

It has also been represented on your behalf, and documentation submitted with your ruling request in support of said representation, that the probate of Taxpayer A's estate was completed on or about September 8, 2005, and that payment of the costs of administering Taxpayer A's estate and payment of Taxpayer A's debts were made prior to that date. It has also been represented that assets held in Taxpayer A's IRA X were not used to pay either the costs of administering Taxpayer A's estate or his debts.

It has been represented that Taxpayer A's IRA X will be subdivided, by means of trustee-to-trustee transfers, into two sub-IRAs. One of the sub-IRAs, which will hold 50% of the amounts held in IRA X, will be set up and maintained in the name of Taxpayer A (deceased) for the benefit of Taxpayer B (beneficiary thereof).

Based on the above facts and representations, the following rulings are requested on your behalf:

1. That, for purposes of Code section 401(a)(9), made applicable to IRA X by Code section 408(a)(6), Trust W, and Subtrust X, created under the terms of Trust W, are valid "see-through" trusts within the meaning of section 401(a)(9)-4 of the "Final" Income Tax Regulations, Question and Answer-5(a);
2. That, for purposes of Code section 401(a)(9), Taxpayers B, C and D are the only individuals, or entities, who need to be considered for purposes of determining who is the "designated beneficiary" (as that term is defined in Code section 401(a)(9)(E)) of Taxpayer A's IRA X; and
3. That, for purposes of Code section 401(a)(9), Taxpayer B's life expectancy may be used to compute required minimum distributions payable to Taxpayer B, one of two equal beneficiaries of IRA X, from the sub-IRA to be created in the name of Taxpayer A to benefit Taxpayer B.

With respect to your ruling requests, 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-

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- (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 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 the trust is maintained.

Code section 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 section 401(a)(9)(B)(iii) provides an exception to the 5-year rule (above). In general, pursuant to the exception, 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 section 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.

Code section 401(a)(9)(E) defines "designated beneficiary" as any individual designated as a beneficiary by the employee (IRA holder).

With further respect to your three 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.

In addition, the "Final" Regulations have been modified in part (See 2004-26 I.R.B. 1082, 1098 (June 28, 2004)). The modification to the "Final" Regulations may also be relied upon with respect to required distributions for the 2003 and subsequent calendar years.

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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), 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. This rule also applies if another individual is a designated beneficiary in addition to the employee's (IRA holder's) surviving spouse.

Section 1.401(a)(9)-3 of the "Final" regulations, Q&A-4(a), provides, in relevant part, that in the absence of a plan provision to the contrary, with respect to an individual who dies prior to reaching his required beginning date, if said individual has designated a beneficiary, distributions from his plan or IRA are to be made in accordance with the life expectancy rule of Code sections 401(a)(9)(B)(iii) and (iv).

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) and the life expectancy rule described in A-1 of section 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. A beneficiary designated under the plan is an individual who is entitled to a portion of an employee's benefit contingent on the employee's death or another specified event. A designated beneficiary need not be specified by name in the plan or by the employee to the plan in order to be a designated beneficiary so long as the individual who is to be the beneficiary is identifiable under the plan. 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)-5 of the "Final" regulations, Q&A-7(a) provides, in summary, 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 for determining the designated beneficiary, the named 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-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 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. Q&A-4(a) further provides, that "consequently, any person who was a beneficiary as of the date of the employee's (IRA holder's) death, but 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 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 section 2518 by that September 30 thereby allowing other beneficiaries to receive the benefit in lieu of that person, the disclaiming person is not taken into account in determining the person's designated beneficiary".

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-7(c) provides, in relevant part, that a person who has any right (including a contingent right) to an employee's benefit beyond being a mere potential successor in the interest of one of the employee's beneficiaries upon that beneficiary's death, must be considered for purposes of determining who, if anyone, is the employee's designated beneficiary. Q&A-7(c) provides an example pursuant to which a principal remainderman of an income beneficiary of an employee's interest must be considered for purposes of determining who, if anyone, is the employee's designated beneficiary.

Section 1.401(a)(9)-8 of the "Final" regulations, Qs&As-2 and 3 provide the rules that apply if the IRA of a deceased IRA holder is divided into separate accounts for purposes of Code section 401(a)(9).

Section 1.401(a)(9)-8 of the "Final" regulations, Q&A-2(a)(2), provides that if an employee's (IRA holder's) benefit in a defined contribution plan is divided into separate accounts and the beneficiaries with respect to one separate account differ from the beneficiaries with respect to the other separate accounts of the employee under the plan, for years subsequent to the calendar year containing the date as of which the separate accounts were established, or date of death if later, such separate account under the plan is not aggregated with the other separate accounts under the plan in order to determine whether the distributions from such separate account under the plan satisfy section 401(a)(9). However, the applicable distribution period for each such separate account is determined disregarding the other beneficiaries only if the separate account is established on a date no later than the last day of the year following the calendar year of the employee's (IRA holder's) death.

Section 1.401(a)(9)-8 of the "Final" regulations, Q&A-3, defines separate accounts for purposes of Code section 401(a)(9), as separate portions of an employee's benefit reflecting the

separate interests of the employee's beneficiaries under the plan as of the date of the employee's death for which separate accounting is maintained. The separate accounting must allocate all post-death investments, gains and losses, contributions, and forfeitures for the period prior to the establishment of the separate accounts on a pro rata basis in a reasonable and consistent manner among the separate accounts.

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.

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.

Section 1.401(a)(9)-9, of the "Final" Regulations, Q&A-1, sets forth the "Single Life Table" used to compute the life expectancy of an individual.

As previously noted, taxpayers must compute minimum required distributions for calendar years beginning with calendar year 2003 in accordance with the "Final" regulations referenced above.

With respect to your first ruling request, we note that TrustW, and Subtrust X created under its terms, are valid under the terms of State B, and became irrevocable at the death of Taxpayer A. We also note that a copy of Trust W had been provided to Company A prior to the date of this

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ruling request. Finally, we note the identity of the beneficiaries of Trust W (and Subtrust X) may be determined by perusing the terms of Trust W.

Thus, with respect to your initial ruling request, we determine as follows:

1. That, for purposes of Code section 401(a)(9), made applicable to IRA X by Code section 408(a)(6), Trust W, and Subtrust X, created under the terms of Trust W, are valid "see-through" trusts within the meaning of section 401(a)(9)-4 of the "Final" Income Tax Regulations, Question and Answer-5(a).

With respect to your second ruling request, we note that Taxpayer B is the sole outright beneficiary of his 50% share of the assets of Trust W, including IRA X. However, Taxpayer C, as a minor, has a limited right to receive his share of the Trust W assets with amounts remaining at his death prior to age 25 (if such an event were to occur) passing to his heirs at law. Thus, we must consider the potential remaindermen of Taxpayer C's interest in IRA X to determine who, if anyone, is the designated beneficiary of Taxpayer A's IRA X.

In this regard, we note it has been represented that Taxpayers B and D, his parents, are Taxpayer C's remaindermen, and their right to receive Taxpayer C's remaining share of IRA X upon Taxpayer C's premature death is not limited.

Thus, with respect to your second ruling request, we conclude as follows:

2. That, for purposes of Code section 401(a)(9), Taxpayers B, C and D are the only individuals, or entities, who need to be considered for purposes of determining who is the "designated beneficiary" (as that term is defined in Code section 401(a)(9)(E)) of Taxpayer A's IRA X.

With respect to your third ruling request, we have concluded that Taxpayers B, C, and D must be considered for purposes of determining who is the designated beneficiary, for purposes of Code section 401(a)(9), of Taxpayer A's IRA X. Furthermore, as noted above, Taxpayer B is the eldest of the three potential beneficiaries.

In this case, IRA X passes through Trust W prior to being distributed to its beneficiaries. Thus, pursuant to Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-5(c), the separate account rules under A-2 of section 1.401(a)(9)-8 are not available to beneficiaries of Trust W with respect to the trust's interest in the Taxpayer A's IRA X. Therefore, the oldest beneficiary among Taxpayers B, C, and D will be the designated beneficiary of both Taxpayer B's and Taxpayer C's interests in IRA X. Taxpayer B is said eldest beneficiary.

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Thus, with respect to your third ruling request we conclude as follows:

3. That, for purposes of Code section 401(a)(9), Taxpayer B's life expectancy may be used to compute required minimum distributions payable to Taxpayer B, one of two equal beneficiaries of IRA X, from the sub-IRA to be created in the name of Taxpayer A to benefit Taxpayer B.

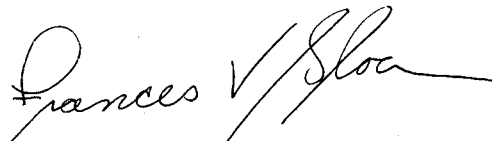
This ruling letter is based on the assumption that IRA X meets the requirements of Code section 408(a) at all times relevant to. Furthermore, this ruling letter rests on the assumption that Trust W is valid under the laws of State B as represented. It also assumes the correctness of all facts and representations contained therein.

A copy of this letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

If you have any questions concerning this letter ruling, please contact _____, Esquire
(ID: _____) who may be reached at 202-283- _____ (not a toll-free number) or 202-283-

(FAX).

Sincerely yours,


Frances V. Sloan, Manager,
Employee Plans Technical Group 3

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