



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

200620026

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

FEB 21 2006

UICs: 401.06-00  
401.06-02

T: EP: RA: T3

Attn:  
Managing Director

**LEGEND:**

Taxpayer A:

Taxpayer B:

Taxpayer C:

Company A:

Company B:

IRA X:

Plan X:

Trust T:

Trustee W:

Subtrust A:

Subtrust B:

State U:

County V:

Court W:

Property A:

Amount 1:

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Amount 2:

Amount 3:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Date 8:

Date 9:

Date 10:

Dear :

This is in response to the , letter submitted on your behalf by your authorized representative(s), as supplemented by a FAX, a FAX and a E-Mail, in which they, on your behalf, request a series of letter rulings under section 401(a)(9), of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request. Your two letter ruling requests have been renumbered as three separate requests for ease of understanding.

Taxpayer A, whose date of birth was Date 1, , died on Date 2, , a resident of State U, without having attained age 70 ½. Taxpayer A was not married at his death, but was survived by two daughters, Taxpayers B and C. Taxpayer B's date of birth was Date 3, , and Taxpayer C's date of birth was Date 4, . Thus, Taxpayer B is older than Taxpayer C. Taxpayers B and C survived Taxpayer A, and were alive as of the date of this ruling request.

At his death, Taxpayer A maintained IRA X, an individual retirement account represented to be qualified within the meaning of Code section 408(a) with Company A. At his death, Taxpayer A was also a participant in Plan X, a plan represented to be qualified within the meaning of Code section 401(a), and sponsored by Company B.

On or about Date 5, , Taxpayer A executed Trust T. On or about Date 6, , and Date 7, , Taxpayer A amended Trust T. In relevant part, the Date 7, amendment to Trust T required Property A be allocated to Subtrust A, one of two sub-trusts created under the terms of Trust T.

Trustee W, a State U trust bank, is the trustee of Trust T. It has been represented that at all times relevant to this request for letter ruling, Trust T was/is valid under the laws of State U. It has also been represented that Trust T became irrevocable at the death of Taxpayer A. Finally, it has been represented that the documentation described in section 1.401(a)(9)-4, Question and Answer-6, of the "Final" Income Tax Regulations was provided to the administrators/custodians of IRA X and Plan X prior to October 31, 2004.

Subsequent to the death of Taxpayer A, Court W, County V, State U, represented to be a court of competent jurisdiction, modified and reformed Trust T effective as of Date 2, .

On or about Date 8, , Taxpayer A named Trust T as the beneficiary of his IRA X. On or about Date 9, , Taxpayer A named Trust T as the beneficiary of his interest in Plan X. Said beneficiary designations remained in effect at the death of Taxpayer A.

As of Date 10, , the value of IRA X was approximately Amount 1, and the value of Taxpayer A's interest in Plan X was approximately Amount 2.

At the death of Taxpayer A, Trust T was divided into Subtrust A and Subtrust B. It has been represented that IRA X and Taxpayer A's interest in Plan X have been allocated in their entirety to Subtrust B. Your authorized representative asserts on your behalf that the allocation of IRA X and of Taxpayer A's interest in Plan X to Subtrust B followed the required allocation of Property A to Subtrust A, as noted above, and followed the allocation to Subtrust A of cash approximating Amount 3 sufficient to pay expenses associated with Property A which payment, pursuant to the terms of Trust T, was to be made from Subtrust A assets to the extent possible. Your authorized representative asserts, in short, that after the allocation of Property A and Amount 3 cash to Subtrust A, IRA X and Taxpayer A's interest in Plan X had to be allocated to Subtrust B.

In general, Article V of Trust T governs the disposition of Subtrust B assets. Article V, Paragraph A-V-2, of Trust T, as amended, provides that the trustee of Trust T shall reallocate the assets held in Subtrust B into shares for the issue of Taxpayer A, per stirpes.

Article V, Paragraph A-V-3, of Trust T, as amended, provides that the trustee thereof shall distribute income and principal to the share beneficiary (i.e. each of Taxpayer A's daughters) for such beneficiary's health, support, maintenance (including reasonable luxuries) and education.

Article V, Paragraph A-V-4, of Trust T, as amended, provides that each beneficiary is given a testamentary general power of appointment.

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Article II, Section A, Paragraph A-II-1-a, of Trust T, as modified, prohibits, after September 30, 2004, the use of any retirement accounts to pay any of Taxpayer A's expenses due to his last illness, funeral expenses, debts, claims or administrative expenses.

Article II, Section A, Paragraph A-II-1-b, of Trust T, as modified, prohibits, after September 30, 2004, the use of any retirement accounts to pay any taxes or assessments with respect to trust property, or any estate taxes assessed by reason of Taxpayer A's death.

Article II, Section B, of Trust T, as amended, in relevant part, defines "Retirement Account" to include any IRA, Plan Benefit, or Annuity.

Article V, Section A, Paragraph A-V-3-b, of Trust T, as amended, provides that "Notwithstanding anything herein to the contrary, any and all amounts withdrawn from any Retirement Accounts payable to the Trust shall be distributed, not less frequently than annually, to, or for the benefit of, the person for whose benefit a share of Subtrust B has been allocated".

It has been represented on your behalf that funds from retirement assets will be used to pay asset management fees to Trustee W which fees will be paid directly to Trustee W and will not flow through Trust T.

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

1. That Trust T, as amended, is a qualified "See-Through Trust" within the meaning of section 1.401(a)(9)-4 of the "Final" Income Tax Regulations, Question and Answer-5;
2. that Code section 401(a)(9) minimum required distributions from IRA X may be calculated based upon the life expectancy of Taxpayer B, the elder of Taxpayers B and C, using the Single Life Table found in the "Final" regulations; and
3. that Code section 401(a)(9) minimum required distributions from Taxpayer A's interest in Plan X may be calculated based upon the life expectancy of Taxpayer B, the elder of Taxpayers B and C, using the Single Life Table found in the "Final" regulations.

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 --

- (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)(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)(E) defines "designated beneficiary" as any individual designated as a beneficiary by the employee (IRA holder).

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.

With further 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[.]

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.

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)-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 section 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)-5 of the "Final" regulations, Q&A-7(a) provides, in relevant part, 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 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)-5 of the "Final" regulations, Q&A-7(b) provides, in short, that except as provided in paragraph (c)(1) of this A-7, if a beneficiary's entitlement to an employee's benefit after the employee's death is a contingent right, such contingent beneficiary is nevertheless considered to be a beneficiary for purposes of determining who, if anyone, is the employee'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)-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 there is no corpus.
- (2) the trust is irrevocable or will, by its terms, become 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) relevant documentation has been timely provided to the plan administrator.

Section 1.401(a)(9)-4 of the "Final" Regulations, Q&A-6(b), provides in relevant summary, that, at a minimum, documentation sufficient to enable an IRA custodian to identify beneficiaries of

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an IRA must be provided by a trustee to the custodian by October 31 of the calendar year immediately following the calendar year in which the IRA owner died.

Section 1.401(a)(9)-9 of the "Final" Regulations, Q&A-1, sets forth the "Single Life Table" to be used to determine the life expectancy of an individual. The "Single Life Table" indicates that the life expectancy of a 26-year old is 57.2 years.

Section 402(a) of the Code states, in relevant part, that any amount actually distributed to any distribute by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distribute in the taxable year of the distribute in which distributed, under section 72 (relating to annuities).

Code section 408(a) provides the rules governing IRAs. Code section 408(d)(1) provides that except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distribute, as the case may be, in the manner provided under section 72.

With specific reference to your first ruling request, it has been represented that Trust T, and the sub-trusts created under its terms, are valid under the laws of State U and became irrevocable at the death of Taxpayer A. Furthermore, it has been represented that a copy of the documentation required under the "Final" Regulations promulgated under Code section 401(a)(9) was timely given to the administrator(s) or IRA X and Plan X. Finally, the identities of the beneficiaries of Trust T may be determined by perusing its terms.

Thus, in response to your initial ruling request, we conclude as follows:

1. That Trust T, as amended, is a qualified "See-Through Trust" within the meaning of section 1.401(a)(9)-4 of the "Final" Income Tax Regulations, Question and Answer-5.

With respect to your second and third ruling requests, since Trust T, and its sub-trusts, constitute a valid "See-Through Trust", it is necessary to determine who, if anyone, is the designated beneficiary, within the meaning of Code sections 401(a)(9) and 408(a)(6), of Taxpayer A's IRA X and of his interest in Plan X. In this regard, we note that IRA X and Taxpayer A's interest in Plan X were allocated to Subtrust B after other assets were allocated to Subtrust A which necessitated the allocation of IRA X and Taxpayer A's interest in Plan X to Subtrust B. In short, it has been represented that the allocation of IRA X and of Taxpayer A's interest in Plan X to Subtrust B was required under the terms of Trust T.

As noted above, Taxpayers B and C are beneficiaries of Subtrust B. As amended, the terms of Trust T and Subtrust B require that all distributions made from IRA X and from Taxpayer A's interest in Plan X during a calendar year be paid to the appropriate distribute/payee during said calendar year. Said requirement precludes the accumulation of any portion of said distributed amounts for the benefit of other Subtrust B beneficiaries after the end of the year with respect to

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which said distribution was made. As a result, Taxpayers B and C are the only beneficiaries who will receive the distributed amounts and the only beneficiaries who must be considered for purposes of determining who is the designated beneficiary, within the meaning of Code section 401(a)(9), of IRA X and of Taxpayer A's interest in Plan X. As noted previously, Taxpayer B is older than Taxpayer C.

Thus, with respect to your second and third ruling requests, based on the above, we conclude as follows:

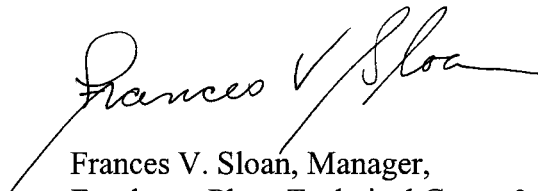
2. that Code section 401(a)(9) minimum required distributions from IRA X may be calculated based upon the life expectancy of Taxpayer B, the elder of Taxpayers B and C, using the Single Life Table found in the "Final" regulations; and
3. that Code section 401(a)(9) minimum required distributions from Taxpayer A's interest in Plan X may be calculated based upon the life expectancy of Taxpayer B, the elder of Taxpayers B and C, using the Single Life Table found in the "Final" regulations.

This ruling letter is based on the assumption that IRA X meets the requirements of Code section 408(a) at all times relevant to, and that Plan X is qualified within the meaning of Code section 401(a) at all times relevant thereto. Furthermore, this ruling letter rests on the assumption that Trust T, and its related sub-trusts, are valid under the laws of State U 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- - (not a toll-free number) or 202- -  
(FAX).

Sincerely yours,

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

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