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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NOV 27 2006

UICs: 401.06-01
401.06-02

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Taxpayer D:

Company A:

IRA X:

Trust T:

Trustee W:

State U:

Statute Sections:

Amount 1:

Amount 2:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

This is in response to the _____, letter submitted on your behalf by your authorized representative(s), as supplemented by correspondence dated _____, and _____, 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.

Taxpayer A, whose date of birth was Date 1, 1933, died on Date 2, 2003, a resident of State U, without having attained age 70 ½. Taxpayer A was survived by her son, Taxpayer B, whose date of birth was _____ and a daughter, Taxpayer C, whose date of birth was _____. Taxpayer A was also survived by a sister, Taxpayer D.

At her 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. The value of IRA X as of the date of Taxpayer A's death was approximately Amount 1.

On or about Date 5, 1997, Taxpayer A named Trust T as the beneficiary of IRA X.

On or about Date 5, 1997, Taxpayer A executed Trust T. Trustee W is the current 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, pursuant to Article IV, Section B, 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 administrator/custodian of IRA X prior to October 31, 2004.

Article VII of Trust T lists specific gifts of Trust T property to be distributed to specific beneficiaries after the death of Trustor (Taxpayer A). Article VIII, Section C, of Trust T provides, in summary, that, after satisfying the Trust's specific bequests, and after satisfying the requirements of Article VIII, Sections A and B, the remaining Trust T property is to be used to fund two sub-trusts to benefit Taxpayers B and C. Article VIII, Section C9 provides that the trust for each child (Taxpayer B and Taxpayer C) shall terminate when each child attains 45, at which time the trust property shall be distributed free of trust to said child. Taxpayer B and Taxpayer C had each attained age 45 prior to the death of Taxpayer A.

It has been represented that, in addition to IRA X, Trust T was the beneficiary of other property, totaling approximately Amount 2 in value, upon the death of Taxpayer A. It has also been represented that satisfaction of all of the bequests required under provisions of Trust T, including the funding of an annuity for the benefit of Taxpayer D, and satisfaction of all estate taxes associated with the estate of Taxpayer A were made by using assets other than IRA X. A representation has been made that use of non-IRA X

assets was required under State U Statute Sections and relevant State U case law. Thus, as a result, to conform to the requirements of State U law, IRA X had to be used to fund the sub-trusts set up to benefit Taxpayers B and C under Article VIII, Section C, of Trust T.

It has been represented that distributions intended to satisfy the requirements of Code sections 401(a)(9) and 408(a)(6) have been made from IRA X since calendar year 2004 to Taxpayers A and B based on the life expectancy of Taxpayer B.

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

1. That Trust T, and the sub-trusts created under the provisions of Article VIII, Section C, are "see-through" trusts as that term is described in Section 1.401(a)(9)-4 of the "Final" Income Tax regulations, Question and Answer-5(b);

2. that Taxpayers B and C are the only individuals who have to be considered potential "designated beneficiaries", as that term is defined in Code section 401(a)(9)(E), for purposes of determining the payout period of distributions from IRA X;

3. that distributions from IRA X to Taxpayer B may be based on the life expectancy of Taxpayer B, the elder of Taxpayers B and C, using his attained age in calendar year 2004, the year after the year of death of Taxpayer A, and reduced by one during each subsequent calendar year.

With respect to your ruling requests, Code section 408(a) provides the rules governing IRAs. 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.

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) (before 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.

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).

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-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 date, 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.

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 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)-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)-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)-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 are not available to beneficiaries of a trust with respect to the trust's interest in an employee's benefit.

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 47-year old is 37.0 years.

With specific reference to your first ruling request, it has been represented that Trust T is 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

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timely given to the administrator(s) of IRA X. Finally, the identities of the beneficiaries of Trust T, each of whom is a human being, may be determined by perusing its terms.

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

1. That Trust T 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 valid "See-Through Trusts", 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. In this regard, we note that IRA X was allocated to the subtrusts created under the terms of Article VIII, Section C, of Trust T to conform to the requirements of State U law. Thus, in accordance with State U law, Trustee W, Trust T's trustee, did not have the discretion to allocate IRA X in such a way that it could be used to satisfy any other bequest of Trust T. In short, it has been represented, and documentation attached to this ruling request support the representation, that the allocation of IRA X to the subtrusts, referenced above, was mandatory and not discretionary.

As noted above, Taxpayers B and C are the only beneficiaries of the two subtrusts referenced above. Also, as noted above, since both Taxpayer B and Taxpayer C had attained age 45 prior to the death of Taxpayer A, distributions from the property used to fund said subtrusts, including IRA X, are to be made directly to Taxpayers B and C, without limitation, and free of trust. This precludes the accumulation of any portion of said distributed amounts for the benefit of other subtrust beneficiaries after the end of the year with respect to 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)(E), of IRA X. As noted previously, Taxpayer B is older than Taxpayer C. Furthermore, as noted above, Taxpayer B was 47 years of age in calendar year 2004.

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

2. that Taxpayers B and C are the only individuals who have to be considered potential "designated beneficiaries", as that term is defined in Code section 401(a)(9)(E), for purposes of determining the payout period of distributions from IRA X; .

3. that distributions from IRA X to Taxpayer B may be based on the life expectancy of Taxpayer B, the elder of Taxpayers B and C, using his attained age in calendar year 2004, the year after the year of death of Taxpayer A, and reduced by one during each subsequent calendar year.

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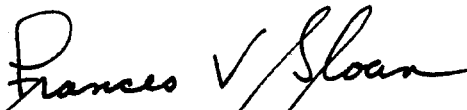
This ruling letter assumes that IRA X either was, is, or will be, as represented, qualified within the meaning of Code section Code section 408(a), at all times relevant thereto. It also assumes that Trust T is valid under the laws of State U as represented. Additionally, it assumes the correctness of all facts and representations contained therein.

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.

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

Any questions regarding this letter ruling should be addressed to
, Esquire (ID: -) at 202- - (phone-not a toll-free number) or 202-
(FAX).

Sincerely yours,



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

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose