TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

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

July 12, 2007

T:EP:RA:T3

UIL: 401.06-00, 401.06-02

Number: **200740018**
Release Date: 10/5/2007

LEGEND:

Taxpayer A:

Individual B:

Individual C:

Company M:

Trust T:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Date 8:

State O:

Section Q:

IRA X:

IRA Y:

Amount 1:

Charity C:

Dear :

This is in response to the , request for letter rulings under sections 401(a)(9) and 408(d) 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, whose date of birth was Date 1, 1935, died on Date 2, 2005 at age 70, a resident of State O. As of her date of death, Taxpayer A owned IRA X which was maintained with Company M.

Taxpayer A was survived by two cousins, Individual B and Individual C. Individual B is older than Individual C.

On or about Date 5, 2001, Taxpayer A named Trust T as the beneficiary of her IRA X.

Trust T was created by Taxpayer A, as grantor and trustor, on Date 3, 1995. Trust T was subsequently amended and restated on Date 4, 2001. Your authorized representative has asserted that Trust T is valid under the laws of State O. In this regard, Section Q of the Compiled Laws of State O provides, in relevant part, that an individual retirement account described in Code section 408 shall be liable neither for the payment of administration expenses of the settlor's estate nor for the payment of creditors' claims including, but not limited, to claims for the payment of the settlor's funeral and burial expenses.

Article III, section 3.1, of Trust T, as amended, provides that Trust T became irrevocable at the death of Taxpayer A.

Individual B and Individual C are the co-trustees of Trust T.

Section 4.2(a) of Trust T provides for a charitable donation in the amount of Amount 1 to Charity C. Documentation provided the Service indicates that payments totaling Amount 1 were made to Charity C on Date 7, 2005 and Date 8, 2006. Date 8, 2006 predates September 30, 2006.

It has been represented that the notice required under section 1.401(a)(9)-6 of the "Final" regulations has been provided to the administrator of IRA X.

Subsequent to the death of Taxpayer A, on or about Date 6, 2006, IRA X payable to Trust T was transferred by means of a trustee-to-trustee transfer to IRA Y set up and maintained with Company M in the name of Taxpayer A (Deceased) for the benefit of Trust T with Individuals B and C as beneficiaries of Trust T.

Individual B intends to accomplish a trustee to trustee transfer of her interest in Taxpayer A's IRA X (now IRA Y) into a sub-IRA set up and maintained in the name of Taxpayer A (Deceased) for the benefit of Trust T with Individual B as the beneficiary of said Trust T. In other words, Individual B will accomplish a transfer of her interest in IRA Y into another IRA set up solely to benefit her. After said transfer is accomplished, minimum required distributions within the meaning of Code section 401(a)(9) (applicable to IRAs under Code section 408(a)(6)) will be made using the remaining life expectancy of Individual B.

Your authorized representative has asserted on your behalf that a distribution intended to comply with the requirements of Code section 401(a)(9) was made from IRA Y/IRA X during calendar year 2006.

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

1. That, for purposes of Code section 401(a)(9), Trust T, referenced above, is a "see-through" trust as that term is defined in section 1.401(a)(9)-4 of the "Final Income Tax Regulations ("Final regulations"), Question and Answer-5;

2. that IRA Y may be subdivided, by means of trustee-to-trustee transfers, into two-sub IRAs one of which will be created in the name of Taxpayer A (Deceased) for the benefit of Individual B, a beneficiary of Trust T; and

3. that "minimum required distributions" within the meaning of Code section 401(a)(9), made applicable to an IRA pursuant to Code section 408(a)(6), from the sub-IRA to be created to benefit Individual B made be made with reference to the life expectancy of Individual 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-

(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 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. Under 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) 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.

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-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.

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 § 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. 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, 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.

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 § 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.

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 408(d)(1) provides, generally, that, in accordance with the rules of § 72, amounts paid or distributed from an IRA are included in the gross income by the payee or distributee.

Code section 408(d)(3)(C) provides, generally, that amounts from an "inherited" IRA cannot be rolled over into another IRA. In general, an "inherited" IRA is an IRA maintained by an individual who acquired said IRA by reason of the death of another if the acquiring individual is not the surviving spouse of said other individual. In this case, as noted above, Taxpayer B is Taxpayer A's nephew.

Revenue Ruling 78-406, 1978-2 C.B. 157, provides that the direct transfer of funds from one IRA trustee to another IRA trustee, even if at the behest of the IRA holder, does not constitute a payment or distribution to a participant, payee or distributee as those terms are used in Code § 408(d). Furthermore, such a transfer does not constitute a rollover distribution.

Additionally, a trustee to trustee transfer, as described in Rev. Rul. 78-406, does not constitute a distribution or payment as those terms are defined for purposes of Code section 408(d).

Finally, Rev. Rul. 78-406 is applicable if the trustee to trustee transfer is directed by the beneficiary of an IRA after the death of the IRA owner as long as the transferee IRA is set up and maintained in the name of the deceased IRA owner for the benefit of the beneficiary.

With respect to your first ruling request, Taxpayer A's IRA X (now IRA Y) was payable to Trust T pursuant to a beneficiary designation a copy of which accompanied this ruling request. Trust T became irrevocable at the death of Taxpayer A. Trust T is valid under the laws of State O. A copy of Trust T was timely delivered to Company M. Finally, the identity of the beneficiaries of Trust T can be determined by perusing its terms. Individual B is a named beneficiary of Trust T.

Thus, Trust T complies with the requirements of section 1.401(a)(9)-4 of the "Final" Regulations, Q&A-5.

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

1. That, for purposes of Code section 401(a)(9), Trust T, referenced above, is a "see-through" trust as that term is defined in section 1.401(a)(9)-4 of the "Final Income Tax Regulations ("Final regulations"), Question and Answer-5.

With respect to your second ruling request, as noted above, Individual B is one of two beneficiaries of Taxpayer A's IRA X (now IRA Y) of which Trust T is the named beneficiary. Individual B is not Taxpayer A's surviving spouse. Thus, Individual B is not eligible to receive a distribution of her interest in IRA X (now IRA Y) and roll over such a distribution into an IRA even if the recipient IRA is set up in the name of Taxpayer A (Deceased) to benefit Individual B.

However, a trustee-to-trustee transfer does not constitute a distribution. Thus, such a transfer may be accomplished by a beneficiary who is not the surviving spouse of a deceased IRA owner. Furthermore, a trustee to trustee transfer from one IRA to another may be accomplished after the date of death of an IRA owner by a beneficiary of said IRA owner as long as the transferee IRA remains in the name of the decedent for the benefit of a beneficiary.

In this case, Individual B intends to accomplish a trustee to trustee transfer of her interest in Taxpayer A's IRA X (now IRA Y). Such a transfer will be into an IRA maintained in the name of Taxpayer A (Deceased) to benefit Individual B as a beneficiary of Trust T, the named beneficiary of IRA Y.

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

2. That IRA Y may be subdivided, by means of trustee-to-trustee transfers, into two-sub IRAs one of which will be created in the name of Taxpayer A (Deceased) for the benefit of Individual B, a beneficiary of Trust T.

With respect to your third ruling request, as noted above, section 1.401(a)(9)-4 of the "Final" regulations Q&A-5(c), provides, in relevant part, that the separate account rules of A-2 of section 1.401(a)(9)-8 are not available to the beneficiaries of the 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. Thus, in general, each beneficiary of a trust must receive minimum required distributions over the life expectancy of the eldest beneficiary.

For purposes of determining which trust beneficiary's life expectancy will be used to determine the minimum required distribution payout period, the term "beneficiary", in general, includes individuals or entities who are not eligible to be treated as "designated beneficiaries" within the meaning of Code section 401(a)(9).

The issue raised in your third ruling requests is which Trust T beneficiaries must be considered in determining who is the designated beneficiary of IRA X (now IRA Y).

Under the general rule, above, both Individual B and Individual C must be considered to determine who is the Code section 401(a)(9) designated beneficiary with respect to IRA X (now IRA Y) that was bequeathed by Taxpayer A to Trust T. Furthermore, as noted above, Individual B is older than Individual C.

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

3. That "minimum required distributions" within the meaning of Code section 401(a)(9), made applicable to an IRA pursuant to Code section 408(a)(6), from the sub-IRA to be created to benefit Individual B made be made with reference to the life expectancy of Individual B.

This ruling letter is based on the assumption that IRA X and IRA Y either have met, are meeting, or will meet the requirements of Code section 408(a) at all times relevant thereto. It also assumes that Trust T is valid under the laws of State O 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 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.

If you have any questions concerning this letter ruling, please contact , Esquire at: - - (not a toll-free number) or - - (FAX).

Sincerely yours,

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

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose