200811028

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

DEC 21 2007

T:EP:RA:T3

Uniform Issue List: 401.06-01
401.06-02
4974.00-00

Legend:

Taxpayer A =
Decedent B =
IRA X =
IRA Y =

IRA Z =

Date 1 =
Date 2 =
Date 3 =
Date 4 =

Dear

This is in response to your request dated March 21, 2007, as supplemented by correspondence dated September 5, 2007, and December 7, 2007, in which you, through your authorized representative, request rulings under section 401(a)(9) of the Internal Revenue Code ("the Code").

The following facts and representations have been submitted under penalty of perjury in support of the rulings requested.

Taxpayer A, born on Date 1, 1972, is the sole surviving child of Decedent B, who died on Date 2, 2002, at 66 years of age. Decedent B's date of birth was Date 4, 1936. At the time of Decedent B's death, he maintained IRA X and IRA Y. Decedent B executed individual beneficiary designation forms for IRA X and IRA

Y naming Taxpayer A as the sole beneficiary of each IRA. Decedent B was unmarried at the time each beneficiary designation form was executed and remained unmarried until his death. No distributions were made from IRA X or IRA Y prior to Date 2, 2002, the date of Decedent B's death. After Decedent B's death, IRA X and IRA Y were re-titled as follows: IRA X-Decedent B, Decedent IRA, Taxpayer A, Beneficiary, and IRA Z (formerly IRA Y)-also Decedent B, Decedent IRA, Taxpayer A, Beneficiary. No distributions were made from either IRA in connection with this re-titling.

The terms of IRA X provide, in relevant part, that where a required distribution has not commenced prior to the owner's death, the balance of the IRA must be distributed to the owner's non-spouse designated beneficiary over his or her life expectancy starting by December 31 of the calendar year following the calendar year of the IRA owner's death. Said non-spouse beneficiary may elect to receive distributions in accordance with the 5-year rule.

IRA Y provides, in relevant part, that if the owner dies prior to his required beginning date, his non-spouse beneficiary may receive distributions over his or her life expectancy beginning no later than the end of the calendar year following the calendar year of the IRA owner's death. Such non-spouse beneficiary may choose to receive required distributions in accordance with the 5-year rule.

Decedent B died prior to reaching his "required beginning date" as that term is defined in Code section 401(a)(9)(C). The required minimum distributions for 2003, 2004, and 2005 were taken in the aggregate in 2005, based on the applicable life expectancy of Taxpayer A for each year using the distribution period determined in accordance with Treas. Reg. 1.401(a)(9)-5, Q&A-5(c)(1). 2003 was the calendar year immediately following the calendar year of Decedent B's death.

On or about Date 3, 2007, Taxpayer A paid the additional tax prescribed under Code section 4974(a) for failure to timely receive minimum required distributions for 2003 and 2004.

It has been represented, and evidence submitted in conjunction with this ruling request supports the representation, that Taxpayer A had not elected the 5-year distribution rule of Code section 401(a)(9)(B)(ii) with respect to either IRA X or IRA Y (as retitled).

Based on the facts and representations, you request the following rulings:

1. That the required minimum distributions from IRA X and IRA Y for 2003, 2004, 2005, 2006 and all subsequent years, may be calculated based on the life

expectancy of Taxpayer A as determined under the Single Life Table of section 1.401(a)(9)-9 of the Income Tax Regulations;

2. That the failure to timely take the required minimum distributions on behalf of Taxpayer A for 2003 and 2004 does not affect the calculation of minimum required distributions in subsequent years based on the single life expectancy of Taxpayer A computed in 2003 and reduced as provided in the "Final" Income Tax Regulations; and

3. That the failure to timely distribute Code section 401(a)(9) required minimum distributions for 2003 and 2004 resulted in the imposition of the 50 percent excise tax under Code section 4974(a).

With respect to your ruling requests, Code section 408(a)(6) generally provides that, under regulations provided by the Secretary, rules similar to the rules of section 401(a)(9) shall apply to the entire interest of an individual for whose benefit the IRA is maintained.

Code section 401(a)(9)(A)(ii) provides, in relevant summary, that distributions from a qualified plan (to include an IRA) must begin no later than the plan participant's/IRA holder's required beginning date and must be made over a period no longer than the life expectancy of the plan participant/IRA holder and his/her designated beneficiary.

Code section 401(a)(9)(B)(ii) provides, in general, that if a plan participant, including an 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, in general, that if any portion of the interest of a deceased plan participant, including an 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 ½.

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

Code section 4974(a) provides, in relevant part, that any failure to distribute the minimum required distribution for such taxable year is subject to a tax equal to 50 percent of the amount by which such minimum required distribution exceeds the actual amount distributed during the taxable year.

Code section 4974(d) provides, in summary, that the tax imposed by Code section 4974(a) may be waived by the Secretary for "good cause".

On April 17, 2002, "Final" Income Tax Regulations ("final regulations") under Code sections 401(a)(9) and 408(a)(6) were published in the Federal Register (see 67 Federal Register 18988). The Explanation of Provisions of the final regulations provides, in relevant part, in the section titled "Default Rule for Post-Death Distributions", that "...if an employee dies before the employee's required beginning date and the employee has a designated beneficiary, then the life expectancy rule in section 401(a)(9)(B)(iii) is the default distribution rule. Thus, absent a plan provision or election of the 5-year rule, the life expectancy rule applies in all cases in which the employee has a designated beneficiary, and the 5-year rule applies if the employee does not have a designated beneficiary...".

Section 1.401(a)(9)-3 of the Final Income Tax Regulations ("final regulations"), Q&A-3(a), provides, in general, that with respect to the life expectancy exception of 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/IRA holder died.

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.

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)-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 section 1.401(a)(9)-5 of the final regulations, Q&A-5(c).

Section 1.401(a)(9)-5 of the final regulations, Q&A-5(c)(1), provides, in general, in the case where a plan participant/IRA holder dies prior to reaching his required beginning date, 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)-9 of the final regulations sets forth the life expectancy tables used to determine required minimum distributions, including the Single Life Table in Q&A-1.

With respect to the first requested ruling, Decedent B died prior to attaining his required beginning date. Furthermore, it has been represented, and documentation supporting this ruling request indicates, that Decedent B named Taxpayer A as the beneficiary of his IRA X and his IRA Y. Hence, Taxpayer A is the "designated beneficiary", as that term is defined in Code section 401(a)(9)(E), of Decedent B's IRA X and his IRA Y. Accordingly, as of the date of Decedent B's death, Taxpayer A, who was not Decedent B's surviving spouse, was eligible to receive required minimum distributions from IRA X and IRA Y calculated using her non-recalculated life expectancy.

With specific respect to your second and third ruling requests, since Taxpayer A was the designated beneficiary of IRA X and IRA Y, pursuant to Code sections 401(a)(9) and 408(a)(6), distributions to her from said IRAs were required to begin no later than December 31 of 2003, the calendar year following the calendar year of Decedent B's death. However, as noted above, they did not. Furthermore, no required distribution from either IRA was made during calendar year 2004. However, as noted above, distributions intended to satisfy the required distribution rules for 2003, 2004, and 2005 were made during 2005, and the excise tax imposed under Code section 4974 was paid for the failure to timely take the 2003 and 2004 required distributions. Thus, the issue to be addressed is whether the failure to timely take certain required distributions requires that distributions from either IRA X or IRA Y (or both) be made in accordance with the 5-year rule of Code section 401(a)(9)(B)(ii).

As noted previously, the "Default" required distribution rule with respect to IRAs in the case where an IRA holder dies prior to attaining his required beginning date and has designated a beneficiary is the life-expectancy rule and not the 5-

year rule. In this case both IRA X and IRA Y provide for post-death distributions to a beneficiary, in the case where an IRA holder dies prior to attaining his required beginning date, to be made in accordance with the life-expectancy rule unless the designated beneficiary chooses otherwise. Taxpayer A has not elected the 5-year rule with respect to either IRA. Furthermore, it has been represented that the 50% excise tax imposed under Code section 4974 has been paid. Thus, the life-expectancy rule of Code section 401(a)(9)(B)(iii), the "Default" rule, applies to distributions from both IRA X and IRA Y.

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

1. That the required minimum distributions from IRA X and IRA Y for 2003, 2004, 2005, 2006 and all subsequent years, may be calculated based on the life expectancy of Taxpayer A as determined under the Single Life Table of section 1.401(a)(9)-9 of the Income Tax Regulations;

2. That the failure to timely take the required minimum distributions on behalf of Taxpayer A for 2003 and 2004 does not affect the calculation of minimum required distributions in subsequent years based on the single life expectancy of Taxpayer A initially determined in 2003 and reduced as provided in the final regulations; and

3. That the failure to timely make Code section 401(a)(9) required minimum distributions for 2003 and 2004 resulted in the imposition of the 50 percent excise tax under Code section 4974(a) for those years.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

200811028

If you wish to inquire about this ruling, please contact , at 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 letter ruling
Notice of Intention to Disclose

CC: