TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201210047

DEC 15 2011

***Uniform Issue List:* 401.06-01**

T:EP:RA:T2

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LEGEND:

Decedent A: ***

Individual B: ***

Individual C: ***

Trust T: ***

IRA X: ***

Company Y: ***

Date 1: ***

Date 2: ***

Date 3: ***

Date 4: ***

Date 5: ***

State S: ***

Dear ***:

This is in response to your letter dated December 7, 2010 in which you, through your authorized representative, request several letter rulings under sections 401(a)(9), 408, and 691(a)(2) of the Internal Revenue Code ("Code").

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

Decedent A was a resident of State S and established Trust T on Date 1. On Date 2, Decedent A died at age and was survived by his sons, Individuals B and C. At the time of his death, Decedent A owned IRA X, an individual retirement account within the meaning of Code section 408(a), with Company Y.

Decedent A's beneficiary designation form, dated Date 3, designated the Trustee of Trust T as the primary beneficiary of IRA X. You represent that Trust T is valid under the laws of State S, and that a copy of Trust T was delivered to Company Y by October 31 of the calendar year following the year Decedent A died. Trust T became irrevocable upon Decedent A's death.

Section 3, Paragraph D, of Trust T provides that upon the death of Decedent A, the Trustee may sell any property of the trust if deemed in the best interests of the remainder beneficiaries, shall pay all legal claims against the estate and any estate or inheritance taxes, and shall assign, transfer, and convey all remaining assets (other than certain tangible property) equally to Individual B and Individual C. If either Individual B or Individual C is not living upon Decedent A's death and not survived by issue, his share shall be distributed to Decedent A's other living child, per stirpes.

Individual B was born on Date 4, and Individual C was born on Date 5. Both were living on Decedent A's date of death.

Based on the above, you request the following letter rulings:

1. That Trust T constitutes a "see-through" trust within the meaning of section 1.401(a)(9)-4, Q&A-5, of the Income Tax Regulations ("Regulations").

2. That division of IRA X by means of trustee-to-trustee transfers into two inherited IRAs in the name of Decedent A, (a) will not result in taxable distributions or payments under Code section 408(d)(1), and (b) will not constitute a transfer causing inclusion in the gross income of Trust T or either beneficiary under Code section 691(a)(2).

3. That Individuals B and C may each receive the required minimum distributions under Code section 401(a)(9) from his respective inherited IRA using the life expectancy of Individual B.

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 the trust is maintained.

Section 401(a)(9)(A) of the Code provides, in general, that a trust will not be considered qualified unless the plan provides that the entire interest of each employee/ IRA holder —
(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 that a trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), the entire interest of the employee will be distributed within 5 years after the death of such employee.

Code section 401(a)(9)(B)(iii) provides an exception to the 5-year rule: If any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary, such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and such distributions begin not later than 1 year after the date of the employee's death or such later date as the Secretary may by regulations prescribe, for purposes of 401(a)(9)(B)(ii), the portion referred to in subclause (I) shall be treated as distributed on the date on which such distributions begin.

Code section 401(a)(9)(C) provides, in relevant part, that, for purposes of section 401(a)(9), 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) provides that for purposes of section 401, the term "designated beneficiary" means any individual designated as a beneficiary by the employee.

On April 17, 2002, Final Regulations were published in the Federal Register with respect to Code sections 401(a)(9) and 408(a)(6) (see also 2002-19 I.R.B. 852, May 13, 2002).

Section 1.401(a)(9)-4 of the Regulations, Q&A-1, provides, in relevant part, that a designated beneficiary is an individual who is designated as a beneficiary under the plan. An individual may be designated as a beneficiary under the plan either by the terms of the plan or, if the plan so provides, by an affirmative election by the employee (or the employee's surviving spouse) specifying the beneficiary.

Under these Regulations, a designated beneficiary need not be specified by name in 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. The member of a class of beneficiaries capable of contraction or expansion will be treated as being identifiable if it is possible to identify the class member with the shortest life expectancy. Further, the passing of an employee's interest to an individual under a will or otherwise under applicable state law will not make that individual a designated beneficiary under section 401(a)(9)(E) unless that individual is designated as a beneficiary under the plan.

Section 1.401(a)(9)-4 of the 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 or a charitable organization, may not be a designated beneficiary. If a person other than an individual is designated as a beneficiary of an employee's benefit, the employee will be treated as having no beneficiary for purposes of section 401(a)(9), even if there are also individuals designated as beneficiaries.

Section 1.401(a)(9)-4 of the 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 the date of death.

Section 1.401(a)(9)-4 of the Regulations, Q&A-5, provides that where a trust is named as a beneficiary of an employee, beneficiaries of the trust with respect to the trust's interest in the 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, Q&A-6(b) of the Regulations 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.

With respect to your first ruling request, you have represented that Trust T is valid under the laws of State S, that it became irrevocable upon the death of

Decedent A, and that a copy of Trust T was timely given to the IRA custodian. Furthermore, the Service notes that the identity of each person entitled to receive any portion of IRA X upon Decedent A's death is determinable under the provisions of Trust T. The beneficiaries of Trust T are Individuals B and C.

Therefore, with respect to your first ruling request, we conclude:

1. That Trust T constitutes a "see-through" trust within the meaning of section 1.401(a)(9)-4, Q&A-5, of the Regulations.

With respect to your second ruling request, Code section 408(d)(1) provides generally that, in accordance with the rules of Code section 72, amounts paid or distributed from an IRA are included in gross income by the payee or distributee.

Code section 408(d)(3)(A) provides that paragraph (d)(1) of this section does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if -
(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

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.

Revenue Ruling 78-406, 1978-2 C.B. 157, ("Rev. Rul. 78-406") 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 section 408(d). Furthermore, such a transfer does not constitute a rollover distribution. 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.

Code section 691(a)(1) provides that the amount of all items of gross income in respect of a decedent ("IRD") which are not properly includible in respect of the taxable period in which falls the date of the decedent's death or a prior period

(including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the table year when received, of: (A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate; (B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or (C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

Code section 691(a)(2) provides that if a right, described in Code section 691(a)(1), to receive an amount is transferred by the estate of the decedent or a person who received such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of such right at the time of such transfer plus the amount by which any consideration for the transfer exceeds such fair market value. For purposes of Code section 691(a)(2), the term "transfer" includes sale, exchange, or other disposition, or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a transfer to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

Section 1.691(a)-4(b) of the Regulations provides that if the estate of a decedent or any person transmits the right to IRD to another who would be required by Code section 691(a)(1) to include such income when received in his gross income, only the transferee will include such income when received in his gross income. In this situation, a transfer within the meaning of Code section 691(a)(2) has not occurred.

Section 1.691(a)-4(b)(2) of the Regulations provides that if a right to IRD is transferred by an estate to a specific or residuary legatee, only the specific or residuary legatee must include such income in gross income when received.

Section 1.691(a)-4(b)(3) of the Regulations provides that if a trust to which is bequeathed a right of a decedent to certain payments of income terminates and transfers the right to a beneficiary, only the beneficiary must include such income in gross income when received. If the transferee described in Reg. § 1.691(a)-4(b)(2) or (3) transfers his right to receive the amounts in the manner described in Reg. § 1.691(a)-4(a), the principles contained in Reg. § 1.691(a)-4(a) are applied to such transfer. On the other hand, if the transferee transmits his right in the manner described in Reg. § 1.691(a)-4(b), the principles of Reg. § 1.691(a)-4(b) are again applied to such transfer.

Revenue Ruling 92-47, 1992-1 C.B. 198, ("Rev. Rul. 92-47") holds that a distribution to the beneficiary of a decedent's IRA that equals the amount of the balance in the IRA at the decedent's death, less any nondeductible contributions, is IRD under Code section 691(a)(1) that is includible in the gross income of the beneficiary for the tax year the distribution is received.

Further, with respect to your second ruling request, Code section 408(d)(1) provides that, in general, amounts distributed or paid out of an IRA are taxable to the payee or distributee. Code section 408(d)(3)(A) exempts rollovers, but pursuant to paragraph (d)(3)(C) of that section, amounts from "inherited" IRAs may not be rolled over to another IRA. However, as noted above, a trustee-to-trustee transfer described in Rev. Rul. 78-406 does not constitute a payment or distribution. Such a transfer may be accomplished after the death of the IRA holder on behalf of the beneficiaries of a decedent's IRA.

In addition, as noted above, Code section 691(a)(2) provides that the term "transfer" does not include a transfer to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent. Further, Rev. Rul. 92-47 provides that a distribution to the beneficiary of a decedent's IRA that equals the IRA's balance upon the decedent's death, less any nondeductible contributions, is IRD under Code section 691(a)(1) that is includible in the gross income of the beneficiary for the tax year in which the distribution is received.

Therefore, with respect to your second ruling request, we conclude:

2. That division of IRA X by means of trustee-to-trustee transfers into two inherited IRAs in the name of Decedent A (a) will not result in taxable distributions or payments under Code section 408(d)(1), and (b) will not constitute a transfer causing inclusion in the gross income of Trust T or either beneficiary under Code section 691(a)(2) at the time of the transfer.

With respect to your third ruling request, section 1.401(a)(9)-3 of the Regulations, Q&A-3(a), provides, with respect to an employee/IRA holder who dies prior to his required beginning date, that distributions to a non-spouse beneficiary must commence on or before the end of the calendar year immediately following the year in which the employee/IRA holder died. Further, section 1.401(a)(9)-5 of the Regulations, Q&A-5(c)(1), provides that the distribution period is determined using the non-spouse designated beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the decedent'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 Regulations, Q&A-5(c), provides that if the trust has more than one beneficiary, the rules under section 1.401(a)(9)-5, Q&A-7,

determine which beneficiary's life expectancy shall be used to determine the distribution period.

Section 1.401(a)(9)-5 of the Regulations, Q&A-7(a), states that if more than one individual is a designated beneficiary, the 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 Regulations, Q&A-2(a), provides the "separate account" rules with respect to defined contribution plans. A "separate account" is an account under which the beneficiary or beneficiaries differ from the beneficiary or beneficiaries of the other accounts. In general, if separate accounts are set up, for years subsequent to the calendar year containing the date on which the separate accounts were established, or the date of death if later, a separate account under a plan is not aggregated with the other separate accounts under the plan in order to determine whether the distributions from such separate account satisfy the requirements of Code section 401(a)(9). Instead, the rules in Code section 401(a)(9) apply separately to each separate account under the plan.

Section 1.401(a)(9)-8 of the Regulations, Q&A-3, provides that a separate account is a separate portion of an employee's benefit which reflects the separate interest of an employee's beneficiary under the plan as of the employee's death for which separate accounting is maintained. The separate accounting must allocate all post-death investment gains and losses, contributions and forfeitures, for the period prior to the establishment of the separate accounts on a pro-rata basis in a consistent and reasonable manner among the separate accounts.

Section 1.401(a)(9)-4 of the Regulations, Q&A-5(c), provides, in relevant part, that the separate account rules under A-2 of Reg. § 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 Regulations, Q&A-1, sets forth the "Single Life Table," to be used to determine the life expectancy of an individual.

Under the terms of Trust T, Individuals B and C are the potential designated beneficiaries of IRA X. Because Individual B is older than Individual C, and thus has the shortest life expectancy, Individual B will be the designated beneficiary for purposes of determining the applicable distribution period under Code section 401(a)(9).

Therefore, with respect to your third ruling request, we conclude:

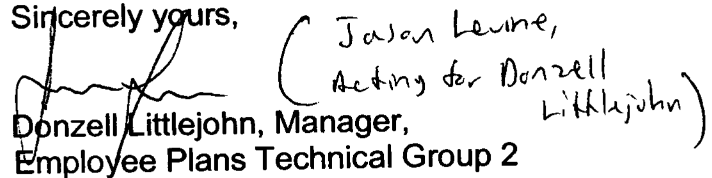
3. That Individuals B and C may each receive the required minimum distributions under Code section 401(a)(9) from his respective inherited IRA using the life expectancy of Individual B.

This ruling letter is based on the assumption that IRA X and the IRAs to be established met or will meet the requirements of Code section 408(a) at all relevant times. Furthermore, this ruling letter rests on the assumption that Trust T is valid under the laws of State S as represented.

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 to your authorized representative. If you wish to inquire about this ruling, please contact ***. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Donzell Littlejohn, Manager,
Employee Plans Technical Group 2

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

cc. ***