201241017

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 05 2012

Uniform Issue List: 401.06-01

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T:EP:RA:T2

LEGEND:

Decedent A: ***

Company B: ***

Individual C: ***

Individual D: ***

Individual E: ***

Individual F: ***

Individual G: ***

Individual H: ***

Individual I: ***

Individual J: ***

Individual K: ***

Custodian L: ***

Trust T: ***

State S: ***

IRA X: ***
***

IRA Y: ***
***

IRA Z: ***
***
***

Date 1: ***

Date 2: ***

Date 3: ***

Date 4: ***

Date 5: ***

Date 6: ***

Dear ***:

This is in response to your letter dated August 25, 2011, in which you, through your authorized representative, request several letter rulings under sections 401(a)(9) and 408 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 testate at age 78. At the time of her death, Decedent A owned IRAs X and Y with Company B, both individual retirement accounts within the meaning of section 408(a) of the Code.

Decedent A's beneficiary designation form for IRA X, dated Date 1, designated the Trustee of Trust T as the primary beneficiary. Decedent A's beneficiary designation form for IRA Y, dated Date 3, designated Trust T as the primary beneficiary. You represent that Trust T is valid under the laws of State S, and that a copy of Trust T was delivered to Company B on or about Date 4, a date that precedes October 31 of the calendar year following the year Decedent A died. Trust T became irrevocable upon Decedent A's death.

Article VI of Trust T provides that, upon the death of Decedent A, the trust property will be divided into "IRA Trust Property" and "Remaining Trust Property." "IRA Trust Property" consists of all IRAs payable to Trust T.

Article VII of Trust T provides that the IRA Trust Property is to be paid over to nine beneficiaries, Individuals C, D, E, F, G, H, I, J, and K, provided each beneficiary survives Decedent A. Each of the nine beneficiaries survived Decedent A. The nine beneficiaries were all born after Decedent A, and Individual E is the oldest, born on Date 5. None of the nine beneficiaries is Decedent A's surviving spouse.

On Date 6, after Decedent A's death, the Trustee of Trust T established IRA Z, an IRA for the benefit of Trust T in the name of Decedent A, and transferred the funds from IRA X and IRAY to IRA Z.

The Trustee of Trust T now proposes to divide IRA Z into nine IRAs, one for the benefit of each of Decedent A's nine beneficiaries, all in the name of Decedent A.

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 the nine beneficiary IRAs, created by means of trustee-to-trustee transfers from IRA Z, each titled as "(name of beneficiary) Bene IRA, Decedent A (DECD), Custodian L as Custodian" are inherited IRAs within the meaning of section 408(d)(3)(C) of the Code.

3. That sections 401(a)(9) and 408 of the Code do not preclude the division of IRA Z and the establishment of nine beneficiary IRAs, each in the name of Decedent A for the benefit of one of the nine named beneficiaries of Trust T.

4. That the trustee-to-trustee transfers from IRA X and IRA Y to IRA Z, and the trustee-to-trustee transfers from IRA Z to the nine beneficiary IRAs, will not constitute taxable distributions or payments, nor will they be considered attempted rollovers.

5. That the trustee-to-trustee transfers to IRA Z and to each of the nine beneficiary IRAs will not cause such IRAs to lose their qualified status under section 408(a) of the Code.

6. That Individuals C, D, E, F, G, H, I, J, and K may each receive the required minimum distribution under section 401(a)(9) of the Code from his or her respective inherited IRA using the life expectancy of the oldest beneficiary who remains a beneficiary on September 30 of the year following Decedent A's death.

With respect to your first ruling request, section 408(a) of the Code provides the rules governing IRAs. Section 408(a)(6) of the Code 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.

Section 401(a)(9)(B)(i) of the Code provides, in general, that if an employee/IRA holder dies after distribution of his interest has begun in accordance with section 401(a)(9)(A)(ii) (after his required beginning date), the remaining portion of his interest must be distributed at least as rapidly as under the method of distribution being used as of the date of his death.

Section 401(a)(9)(C) of the Code 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.

Section 401(a)(9)(E) of the Code 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 sections 401(a)(9) and 408(a)(6) of the Code (see also 2002-19 I.R.B. 852, May 13, 2002). Section 1.408-8 of the Regulations, Q&A-1(a), provides, in part, that IRAs are subject to the required minimum distribution rules under section 401(a)(9) of the Code and that in order to satisfy section 401(a)(9) of the Code for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2003, the rules of section 1.401(a)(9)-1 through 1.401(a)(9)-9 of the Regulations must be applied, except as otherwise provided.

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.

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, the trust is not a designated beneficiary; however, 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 Custodian L, the custodian of IRAs X and Y. Furthermore, 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 C, D, E, F, G, H, I, J, and K.

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 next four ruling requests (numbered two through five), section 408(d)(1) of the Code provides generally that, in accordance with the rules of section 72 of the Code, amounts paid or distributed from an IRA are included in gross income by the payee or distributee.

Section 408(d)(3)(A) of the Code 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).

Section 408(d)(3)(C) of the Code 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 the IRA by reason of the death of another if the acquiring individual is not the surviving spouse of such individual.

Section 1.401(a)(9)-4 of the Regulations, Q&A-5(c), provides in relevant part that the separate account rules under section 1.401(a)(9)-8, Q&A-2 are not available to beneficiaries of a trust with respect to the trust's interest in the employee's benefit.

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 section 408(d) of the Code. 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. The beneficiary accomplishing such a post-death trustee-to-trustee transfer need not be the surviving spouse of a deceased IRA holder.

With respect to your second ruling request, each of the nine beneficiary IRAs, titled as beneficiary IRAs in the name of Decedent A, were acquired by the beneficiaries by reason of the death of Decedent A. None of the beneficiaries is the surviving spouse of Decedent A. Therefore, assuming these accounts otherwise qualify as IRAs under section 408(a) of the Code, they constitute inherited IRAs as that term is defined under section 408(d)(3)(C) of the Code.

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

2. That the nine beneficiary IRAs, created by means of trustee-to-trustee transfers from IRA Z, each titled as "(name of beneficiary) Bene IRA, Decedent A (DECD), Custodian – as Custodian" are inherited IRAs within the meaning of section 408(d)(3)(C) of the Code.

With respect to your third ruling request, nine distinct beneficiary IRAs will be set up to benefit Individuals C, D, E, F, G, H, I, J, and K. Although the Regulations under section 401(a)(9) of the Code preclude separate account treatment where amounts pass through a trust, neither the Code nor the Regulations preclude the posthumous division of IRA X and IRA Y into more than one IRA. Therefore, we conclude:

3. That sections 401(a)(9) and 408 of the Code do not preclude the division of IRA Z and the establishment of nine beneficiary IRAs, each in the name of Decedent A for the benefit of one of the nine named beneficiaries of Trust T.

With respect to your fourth and fifth ruling requests, section 408(d)(1) of the Code provides that, in general, amounts distributed or paid out of an IRA are taxable to the payee or distributee. Section 408(d)(3)(A) of the Code 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.

Therefore, with respect to your fourth and fifth ruling requests, we conclude:

4. That the trustee-to-trustee transfers from IRA X and IRA Y to IRA Z, and the trustee-to-trustee transfers from IRA Z to the nine beneficiary IRAs, will not constitute taxable distributions or payments, nor will they be considered attempted rollovers.

5. That the trustee-to-trustee transfers to IRA Z and to each of the nine beneficiary IRAs will not cause such IRAs to lose their qualified status under section 408(a) of the Code.

With respect to your sixth ruling request, section 1.401(a)(9)-4 of the Regulations, Q&A-4, provides in relevant part that, in general, in order to be a designated beneficiary, an individual must be a beneficiary as of the date of death. The 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 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-5(a), provides, in relevant part, that if an employee dies after distribution of his interest has begun (generally on or after the employee's required beginning date), in order to satisfy section 401(a)(9)(B)(i), the applicable distribution period for distribution calendar years after the distribution calendar year containing the employee's date of death is either—
(1) If the employee has a designated beneficiary as of the date determined under A–4 of § 1.401(a)(9)–4, the longer of--
(i) The remaining life expectancy of the employee's designated beneficiary; and
(ii) The remaining life expectancy of the employee.

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)-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 C, D, E, F, G, H, I, J, and K are the potential designated beneficiaries of IRA X. All of these individuals were born after Decedent A. Therefore, assuming at least one of these individuals remains a beneficiary as of September 30 of the year following Decedent A's death, the required minimum distributions for each of the nine beneficiary IRAs will be determined using the life expectancy of the oldest beneficiary. Individual E is the oldest beneficiary, assuming he remains a beneficiary as of September 30 of the year following Decedent A's death.

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

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6. That Individuals C, D, E, F, G, H, I, J, and K may each receive the required minimum distribution under section 401(a)(9) of the Code from his or her respective inherited IRA using the life expectancy of the oldest beneficiary who remains a beneficiary on September 30 of the year following Decedent A's death.

This ruling letter is based on the assumption that IRAs X, Y, and Z, and the IRAs to be established, met or will meet the requirements of section 408(a) of the Code 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 ************************, I.D. #**-*****, at ***-***-****.
Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,

(Jason Levine, Acting for Donzell Littlejohn)

Donzell Littlejohn, Manager,
Employee Plans Technical Group 2

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

cc. ***
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