**Internal Revenue Service**

Department of the Treasury
Washington, DC 20224

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LEGEND

Estate =

A =

IRA X =

Date 1 =

State =

B =

C =

D =

Dear :

This letter responds to a letter dated November 16, 2012, and subsequent correspondence, submitted on behalf of Estate by its authorized representative, requesting a ruling under §§ 691 and 401 of the Internal Revenue Code.

## FACTS

The information submitted states that A maintained an individual retirement account (IRA), IRA X. A died intestate on Date 1, at the age of 68. A did not name any beneficiaries of IRA X. As a result, the right to receive IRA X passed by State's intestacy law to B, C, and D.

Estate's personal representative proposes to subdivide IRA X into three sub-IRAs. Each sub-IRA will be titled "A (Deceased) for the benefit of [B, C, or D]". Estate represents that the subdivision of IRA X will be made by means of trustee to trustee transfers. Estate represents further that it will allocate all post-death investment gains and losses for the period prior to the establishment of the sub-IRAs on a pro rata basis in a reasonable and consistent manner among the separate accounts.

Based on the above facts and representations, Estate requests the following rulings:

1. that the division of IRA X and the establishment of the three sub-IRAs will not constitute a transfer within the meaning of § 691(a)(2), and B, C, and D will include in gross income the amounts of income in respect of a decedent (IRD) from their respective sub-IRAs when the distributions are received by B, C, and D, respectively, under § 691(a)(1)(C); and

2. that the five-year rule of § 401(a)(9)(B)(ii) will continue to apply to each sub-IRA.

## LAW

Section 691(a)(1) provides that the amount of all items of gross income in respect of a decedent which are not properly includible in respect of the taxable period in which falls the date of his 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 taxable year when received, of: (A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent; (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.

Section 691(a)(2) provides that if a right, described in § 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 this paragraph, 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)-1(b) provides that the term "income in respect of a decedent" (IRD) refers to those amounts to which a decedent was entitled as gross income, but which were not properly includible in computing the decedent's taxable income for the taxable year ending with the date of the decedent's death or for a previous taxable year under the method of accounting employed by the decedent.

Section 1.691(a)-1(c) provides that the term "income in respect of a decedent" also includes the amount of all items of gross income in respect of a prior decedent, if (1) the right to receive such amount was acquired by the decedent by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent and if (2) the amount of gross income in respect of the prior decedent was not properly includible in computing the decedent's taxable income for the taxable year ending with the date of his death or for a previous taxable year.

Section 1.691(a)-4(a) provides that in general, the transferor must include in his gross income for the taxable period in which the transfer occurs the amount of the consideration, if any, received for the right or the fair market value of the right at the time of the transfer, whichever is greater.

Section 1.691(a)-4(b) provides that if the estate of a decedent or any person transmits the right to IRD to another who would be required by § 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.

Section 1.691(a)-4(b)(2) 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.

Rev. Rul. 92-47, 1992-1 C.B. 198, 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 § 691(a)(1) that is includable in the gross income of the beneficiary for the taxable year the distribution is received. Section 408(a)(6) provides, under regulations prescribed by the Secretary, rules similar to the rules of § 401(a)(9) and the incidental death benefit requirements of § 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit an IRA trust is maintained.

Section 1.408-8, Q&A 1(a), provides that IRAs are subject to the regulations regarding required minimum distributions from defined contribution plans under §§ 1.401(a)(9)-1 through 1.401(a)(9)-9 and 1.401(a)(9)-6.

Section 401(a)(9)(B) provides that if a participant dies before the distribution of his interest has begun in accordance with § 401(a)(9)(A)(ii), his entire interest in the plan must be distributed either (a) within 5 years of the participant's death, (under § 409(a)(9)(B)(ii)); or (b) over the life (or over a period not extending beyond the life expectancy) of a designated beneficiary.

Section 1.401(a)(9)-3, Q&A 2, provides that in order to satisfy the 5-year rule contained in § 401(a)(9)(B)(ii), the participant's entire interest must be distributed by the end of the calendar year which contains the fifth anniversary of the participant's death.

Section 401(a)(9)(C) provides, in relevant part, that, for purposes of § 401(a)(9)(A)(ii), the term "required beginning date" means April 1 of the calendar year following the calendar year in which the IRA owner attains age 70 1/2.

Section 1.401(a)(9)-4, Q&A 1, defines "designated beneficiary" as any individual designated as a beneficiary under the plan.

Section 1.401(a)(9)-4, Q&A-3, clarifies that only individuals may be designated beneficiaries. A person that is not an individual, such as a participant's estate, may not be a designated beneficiary.

Section 1.401(a)(9)-4, 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 is designated as a beneficiary under the plan.

Revenue Ruling 78-406, 1978-2 C.B. 157, states that the direct transfer of funds from one IRA trustee to another does not result in a payment or distribution of the funds for purposes of § 408(d)(1). Rev. Rul. 78-406 further provides that such a transfer, even if directed by the participant, is not a rollover contribution to the recipient IRA for purposes

of § 408(d)(3) because the funds are not within the direct control and use of the participant.

Neither the Code nor the Income Tax Regulations promulgated under § 401(a)(9) preclude the posthumous division of an IRA into more than one IRA.

## ANALYSIS AND CONCLUSION

In this case, A, the owner of IRA X, died before attaining his "required beginning date" as that term is defined in § 401(a)(9)(C). In addition, IRA X had no designated beneficiary. Accordingly, the five-year rule of § 401(a)(9)(B)(ii) is applicable to distributions from IRA X.

It is proposed that IRA X be subdivided into three sub-IRAs, one of which will benefit B, one of which will benefit C, and one of which will benefit D. The subdivision will be made by means of trustee-to-trustee transfers pursuant to Rev. Rul. 78-406. Thus, no distributions will be made from IRA X to accomplish its sub-division.

Based solely on the facts and representations submitted, we conclude the following:

1. The division of IRA X and establishment of the three sub-IRAs will not constitute a transfer within the meaning of § 691(a)(2). B, C, and D will each include, in their respective gross income, the amounts of IRD from their respective sub-IRAs when the distribution or distributions from the sub-IRAs are received by B, C, and D, respectively, under § 691(a)(1)(C).

2. The five-year rule of § 401(a)(9)(B)(ii) will apply to each of the sub-IRAs.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any of the provisions of the Code or regulations. This letter does assume, however, that IRA X, and the resultant sub-IRAs, either satisfied, satisfy, or will satisfy, the requirements of § 408 at all times relevant thereto.

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

Sincerely,

James A. Quinn
Senior Counsel, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
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cc: