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Person To Contact:

Telephone Number:

Refer Reply To:
CC:EEE:EB:QP1
PLR-127211-18

Date:
March 15, 2019

In Re:

Legend:

Decedent	=	
Trust T	=	
Child A	=	
Child B	=	
Child C	=	
Child D	=	
State S	=	
IRA X	=	

Dear

This is in response to a request for a letter ruling under sections 401(a)(9) and 408 of the Internal Revenue Code (Code), submitted on behalf of Trust T by its authorized representative in correspondence dated September 6, 2018, and revised by correspondence dated December 17, 2018.

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

Decedent died in 2015 after her “required beginning date,” as that term is defined in section 401(a)(9)(C). Decedent was survived by four children, Child A, Child B, Child C, and Child D, all of whom were alive as of the date of this ruling request.

Prior to her death, Decedent established Trust T, which has not been amended, revoked or otherwise changed since that date. The terms of Trust T provide that Trust T was revocable by Decedent prior to her death, but irrevocable upon her death. Trust T is valid under the laws of State S, in which Decedent resided on the date of her death.

Decedent was the owner of IRA X, an individual retirement arrangement (IRA). Trust T was named the beneficiary of IRA X by means of a beneficiary designation dated Date 1 (prior to Decedent’s death). Prior to October 31, 2016, IRA X’s custodian was provided with information concerning the terms of Trust T and the identities of its beneficiaries.

The terms of Trust T provide that at the death of Decedent, the residual balance of the trust property, including IRA X, was to be divided into separate trusts for each of Decedent’s descendants, *per stirpes*. Trust T identifies Decedent’s four children.

The co-trustees of Trust T propose to divide IRA X by means of trustee-to-trustee transfers into four distinct IRAs, each for the separate benefit of one of Decedent’s four children. Each transferee IRA will be maintained in the name of Decedent (deceased) for the benefit of Trust T for the benefit of the child beneficiary. For example, one transferee IRA will be maintained in the name of Decedent (deceased) for the benefit of Trust T for the benefit of Child B. Distributions from each of these transferee IRAs will be made over the life expectancy of Child A, the eldest of Decedent’s four children.

Your authorized representative has represented that the funds in IRA X have not yet been distributed except for required minimum distributions intended to meet the requirements of section 401(a)(9).

Based on the facts and representations, the following rulings were requested:

1. The beneficiary IRAs created by means of trustee-to-trustee transfers, which will be titled “Decedent (deceased) fbo Trust T fbo (name of child beneficiary),” constitute inherited IRAs as that term is defined in section 408(d)(3)(C).

2. The creation of the above-referenced IRAs for the benefit of each child beneficiary, by means of trustee-to-trustee transfers as provided in Revenue Ruling 78-406, shall not constitute taxable distributions or payments, as those terms are defined for purposes of section 408(d)(1), to each child beneficiary, nor will they be considered

attempted rollovers of the IRAs to each child.

3. The IRAs created by trustee-to-trustee transfers of IRA X maintained by Decedent at her death to an IRA shall be set up in the name of Decedent for the benefit of Trust T for the benefit of each child beneficiary and may be maintained separately for purposes of determining the required minimum distributions under section 401(a)(9).

4. The minimum distribution requirements under section 401(a)(9) concerning the IRAs created by trustee-to-trustee transfers for the benefit of each child beneficiary may be met by distributing amounts annually from each distinct IRA, computed using the remaining life expectancy of the eldest child beneficiary utilizing the Single Life Expectancy Table provided at § 1.401(a)(9)-9, Q&A-1, of the Income Tax Regulations, beginning with the calendar year 2016, reduced by one for each subsequent calendar year in accordance with § 1.401(a)(9)-5, Q&A-5(c)(1).

Law

Under section 401(a)(9)(A), a trust will not be considered qualified unless the plan provides that the entire interest of each employee (1) will be distributed to such employee not later than the required beginning date, or (2) will be distributed, beginning no 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) provides that a trust shall not constitute a qualified trust under the Code unless the plan provides that if the distribution of the employee's interest has begun in accordance with section 401(a)(9)(A)(ii), and the employee dies before his entire interest has been distributed to him, the remaining portion will be distributed at least as rapidly as under the method being used under section 401(a)(9)(A)(ii) as of the date of death.

Section 401(a)(9)(C) provides, in relevant part, that the term “required beginning date” means April 1 of the calendar year following the calendar year in which the employee attains age 70 ½.

Section 401(a)(9)(E) provides that “designated beneficiary” means any individual designated as a beneficiary by the employee.

Section 1.401(a)(9)-4, 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. 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.

Section 1.401(a)(9)-4, 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 designated beneficiary for purposes of section 401(a)(9), even if there are also individuals designated as beneficiaries.

Section 1.401(a)(9)-4, 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, 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 will be treated as designated beneficiaries for purposes of determining the distribution period under section 401(a)(9) 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 § 1.401(a)(9)-4, Q&A-1, from the trust instrument; and (4) relevant documentation has been timely provided to the plan administrator.

Section 1.401(a)(9)-4, Q&A-5(c), provides that, in the case of a trust having more than one individual beneficiary, § 1.401(a)(9)-5, Q&A-7, applies in determining the designated beneficiary whose life expectancy will be used to determine the distribution period. The subsection further provides that the separate account rules under § 1.401(a)(9)-8, Q&A-2, are not available to the beneficiaries of a trust with respect to the trust's benefit in the employee's benefit.

Section 1.401(a)(9)-4, Q&A-6(b), provides, in relevant part, with respect to required minimum distributions after the death of an employee, that documentation sufficient to enable the plan administrator to identify beneficiaries of the plan must be provided by the trustee of the trust to the plan administrator by October 31 of the calendar year immediately following the calendar year in which the employee died.

Section 1.401(a)(9)-5, Q&A-5(a), provides that if an employee dies on or after the employee's required beginning date and has a designated beneficiary, the applicable distribution period for minimum distributions for distribution calendar years after the distribution calendar year containing the employee's date of death is the greater of the life expectancy (determined in accordance with § 1.401(a)(9)-5, Q&A-5(c)) of the designated beneficiary or the employee.

Section 1.401(a)(9)-5, Q&A-5(c)(1), provides that, with respect to minimum distributions in any case in which the surviving spouse is not the sole 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)-5, Q&A-7, provides, in general, that if more than one beneficiary is designated as a beneficiary with respect to an employee as of the applicable date for determining the designated beneficiary under A-4 of § 1.401(a)(9)-4, the designated 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, Q&A-2(a)(1), provides that, except as otherwise provided in Q&A-2, if an employee's benefit under a defined contribution plan is divided into separate accounts under the plan, the separate accounts will be aggregated for purposes of satisfying the rules in section 401(a)(9).

Section 1.401(a)(9)-8, Q&A-2(a)(2), provides that, if the employee's benefit in a defined contribution plan is divided into separate accounts and the beneficiaries with respect to one separate account differ from the beneficiaries with respect to the other separate accounts of the employee under the plan, for years subsequent to the calendar year containing the date as of which the separate accounts were established, or date of death if later, such separate account under the plan is not aggregated with the other separate accounts under the plan in order to determine whether the distributions from such separate account under the plan satisfy section 401(a)(9). Instead, the rules in section 401(a)(9) separately apply to such separate account under the plan. However, the applicable distribution period for such separate account is determined disregarding the other beneficiaries of the employee's benefit only if the separate account is established on a date no later than the last day of the year following the calendar year of the employee's death.

Section 1.401(a)(9)-8, Q&A-3, provides that, for purposes of section 401(a)(9), separate accounts in an employee's account are separate portions of an employee's benefit reflecting the separate interests of the employee's beneficiaries under the plan as of the date 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 408(a)(6) provides that, under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) shall apply to the distribution of the entire interest of an individual for whose benefit an IRA is maintained.

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

Section 408(d)(3) provides an exception to income inclusion under section 408(d)(1) for certain distributions from an IRA to the individual for whose benefit the IRA is maintained that are rolled over within 60 days to another IRA for the benefit of that individual.

Section 408(d)(3)(C) provides that amounts from an inherited IRA cannot be rolled over into another IRA. Under section 408(d)(3)(C)(ii), an IRA is treated as an inherited IRA if the individual for whose benefit the IRA is maintained acquired the IRA by reason of the death of another individual, and such individual is not the surviving spouse of the other individual.

Section 1.408-2(b)(8) provides that the term beneficiaries on whose behalf an IRA is established includes (except where the context indicates otherwise) the estate of the individual, dependents of the individual, and any person designated by the individual to share in the benefits after the death of the individual.

Section 1.408-8, Q&A-1(a), provides that an IRA is subject to the required minimum distribution rules provided in section 401(a)(9). In order to satisfy section 401(a)(9), the rules of §§ 1.401(a)(9)-1 through 1.401(a)(9)-9 must be applied, except as otherwise provided.

Section 1.408-8, Q&A-1(b), provides, as relevant, that for purposes of applying the required minimum distribution rules in §§ 1.401(a)(9)-1 through 1.401(a)(9)-9, the IRA trustee, custodian or issuer is treated as the plan administrator, and the IRA owner is substituted for the employee.

Section 1.408-8, Q&A-3, provides that in the case of distributions from an IRA, the term "required beginning date" means April 1 of the calendar year following the calendar year in which the individual attains age 70 ½.

Revenue Ruling 78-406, 1978-2 C.B. 157, provides that the trustee-to-trustee transfer of funds from one IRA maintained by an individual to another IRA maintained by the same individual, even at the direction of that individual, does not constitute a payment or distribution includible in gross income.

Analysis

With respect to your first ruling request, each IRA created by means of a trustee-to-trustee transfer from IRA X will be titled in the name of "Decedent (deceased) fbo Trust T fbo (name of child beneficiary)." In addition, each child beneficiary will have acquired such IRA by reason of the death of Decedent and is not the surviving spouse of Decedent. Thus, each of these IRAs constitutes an inherited IRA under section 408(d)(3)(C)(ii).

With respect to your second ruling request, each child beneficiary intends to accomplish a trustee-to-trustee transfer to separate that beneficiary's interest in IRA X. Such transfers will be into four separate IRAs established and maintained in the name of Decedent (deceased) for the benefit of Trust T for the benefit of each child beneficiary.

In this case, consistent with Rev. Rul. 78-406, the portion of IRA X that is, in effect, maintained in the name of Decedent (deceased) for the benefit of Trust T for the benefit of a child beneficiary is being separated from the portions maintained for the benefit of the other child beneficiaries and is being transferred to another IRA maintained in the name of Decedent (deceased) for the benefit of Trust T for the benefit of that child beneficiary, with no other change in title from the transferor IRA to the transferee IRA.

With respect to your third ruling request, § 1.401(a)(9)-4, Q&A-5(c), specifically precludes the separate account treatment described in § 1.401(a)(9)-8, Q&A-2(a), for purposes of determining the distribution period under section 401(a)(9), for beneficiaries of a trust with respect to a trust's interest as beneficiary of an IRA after the death of the IRA owner. Accordingly, the child beneficiaries of Trust T with respect to the trust's interest in IRA X must all be taken into account for purposes of determining the applicable distribution period that applies to each transferee IRA for purposes of section 401(a)(9).

However, because § 1.401(a)(9)-4, Q&A-5(c), is specifically applicable only to the determination of the distribution period under section 401(a)(9), § 1.401(a)(9)-4, Q&A-5(c), does not otherwise preclude the creation of separate accounts as described in § 1.401(a)(9)-8, Q&A-2(a)(2), for beneficiaries of a trust with respect to a trust's interest as beneficiary of an IRA after the death of the IRA owner. Accordingly, each transferee IRA may be maintained separately for purposes of section 401(a)(9) except for purposes of determining the applicable distribution period.

With respect to your fourth ruling request, all of the child beneficiaries of Trust T will be considered designated beneficiaries of IRA X under section 401(a)(9) if Trust T satisfies the requirements of § 1.401(a)(9)-4, Q&A-5(b).

Under the facts, Trust T was the named beneficiary of IRA X. Trust T was established by Decedent, was valid under the laws of State S, and became irrevocable at the death of Decedent. In addition, relevant documentation relating to Trust T's status as beneficiary of Decedent's interest in IRA X was given to IRA X's custodian by the date required under § 1.401(a)(9)-4, Q&A-6(b). Further, the beneficiaries of Trust T who are beneficiaries with respect to Trust T's interest in IRA X are identifiable, within the meaning of § 1.401(a)(9)-4, Q&A-1, because these beneficiaries are the four children.

The facts indicate that Trust T satisfies the four requirements of § 1.401(a)(9)-4, Q&A-5(b), to be treated as a "see-through" trust. Therefore, the four child beneficiaries of Trust T are treated as designated beneficiaries of IRA X for purposes of section 401(a)(9).

In this case, under § 1.401(a)(9)-5, Q&A-7, because more than one beneficiary is designated as a beneficiary, the beneficiary with the shortest life expectancy, Child A, is the designated beneficiary for purposes of determining the applicable distribution period under § 1.401(a)(9)-4, A-4. In addition, because Decedent's surviving spouse is not the sole beneficiary, the rule of § 1.401(a)(9)-5, Q&A-5(c)(1) applies.

Rulings

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

1. The beneficiary IRAs created by means of trustee-to-trustee transfers, which will be titled IRA of "Decedent (deceased) fbo Trust T fbo (name of child beneficiary)," constitute inherited IRAs as that term is defined in section 408(d)(3)(C).

2. The creation of the above-referenced IRAs for the benefit of each child beneficiary, by means of trustee-to-trustee transfers as provided in Rev. Rul. 78-406, shall not constitute taxable distributions or payments, as those terms are defined for purposes of section 408(d)(1), to each child beneficiary, nor will they be considered attempted rollovers of the IRAs to each child.

3. The above-referenced IRAs created by trustee-to-trustee transfers from IRA X shall be set up in the name of Decedent for the benefit of Trust T for the benefit of each child beneficiary and may be maintained separately for purposes of determining the required minimum distributions under section 401(a)(9), except (as discussed in ruling 4) with respect to determination of the measuring life for purposes of calculating the applicable distribution period.

4. The minimum distribution requirements under section 401(a)(9) concerning the IRAs created by trustee-to-trustee transfers for the benefit of each child beneficiary may be met by distributing amounts annually from each distinct IRA, computed using the remaining life expectancy of Child A utilizing the Single Life Expectancy Table provided at § 1.401(a)(9)-9, Q&A-1, beginning with the calendar year 2016, reduced by one for each subsequent calendar year in accordance with § 1.401(a)(9)-5, Q&A-5(c)(1).

This letter assumes that IRA X satisfies the requirements of section 408 at all times relevant thereto. It also assumes that the transferee IRAs to be set up by the child beneficiaries will also meet the requirements of section 408 at all times relevant thereto.

The rulings contained in this letter are based upon information and representations submitted by Trust T and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2019-1, 2019-1 I.R.B. 1, § 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2019-1, § 11.05.

Except as expressly provided above, no opinion is expressed or implied concerning the federal income tax consequences of any other aspects of any transaction or item of income described in this letter ruling.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Neil Sandhu
Senior Technician Reviewer
Qualified Plans Branch 1
Office of Associate Chief Counsel
(Employee Benefits, Exempt Organizations, and Employment Taxes)