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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
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PLR-104779-21
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Legend:

Decedent A =
Decedent B =
Trust T =

Child C =
Child D =
Child E =
State S =
IRA X =

IRA Y =

Date 1 =
Date 2 =
Date 3 =
Year 1 =
Year 2 =

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

representatives in correspondence dated January 15, 2021, as updated by correspondence dated May 7, 2021.

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

Decedent A died on Date 3 in Year 1 after his “required beginning date,” as that term is defined in section 401(a)(9)(C). Decedent A was survived by three children, Child C, Child D, Child E, all of whom were alive as of the date of this ruling request.

Prior to his death, Decedent A established Trust T, which has not been amended, revoked or otherwise changed since the date of his death. The terms of Trust T provide that Trust T was revocable by Decedent A before his death, but irrevocable upon his death. Trust T is subject to, and is valid under, the laws of State S.

Decedent A was the owner of IRA X, an individual retirement arrangement (IRA). At the time of his death, Decedent A was the beneficiary of IRA Y, which he had previously inherited from Decedent B, his older sibling, upon Decedent B’s death. Trust T was named the beneficiary of IRA X and IRA Y by means of beneficiary designations made before Decedent A’s death. The beneficiary designations were made on Date 2 for IRA X and Date 1 for IRA Y. You have represented that at all relevant times IRA X and IRA Y have been maintained in accordance with section 408 and all applicable tax rules.

On October 31 of Year 2 (the calendar year immediately following Year 1), 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 A, the residual balance of the trust property is to be divided into separate trusts for each of Decedent A’s descendants, per stirpes. Trust T identifies Decedent A’s three children as trust beneficiaries. The residual balance of trust property includes the assets of IRA X and IRA Y.

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

In addition, the trustees of Trust T propose to separate the assets of IRA Y by means of trustee-to-trustee transfers to three distinct IRAs, each for the separate benefit of one of Decedent A’s three children. Each transferee IRA will be maintained in the name of

Decedent B (deceased) for the benefit of the child beneficiary, as beneficiary of Decedent A. For example, one transferee IRA will be maintained in the name of Decedent B (deceased) for the benefit of Child C, as beneficiary of Decedent A. Distributions from each of these transferee IRAs will be based on the remaining life expectancy of Decedent A. You have represented that under the ownership of each child beneficiary the beneficiary's transferee IRA derived from IRA X will not be combined with the beneficiary's transferee IRA derived from IRA Y. Having different distribution periods, the two transferee IRAs for the benefit of each child beneficiary will remain as separate accounts until each account is fully distributed.

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

1. Each child beneficiary of Trust T is treated as having been designated as a beneficiary of IRA X in accordance with § 1.401(a)(9)-4, Q&A-5, for purposes of determining the distribution period under section 401(a)(9). Required minimum distributions from IRA X are calculated using the life expectancy of Child C, the oldest child beneficiary.

2. The trustees of Trust T may transfer the assets of IRA X by means of trustee-to-trustee transfers to IRAs titled IRA of "Trust T fbo (name of child beneficiary), as beneficiary of Trust T" in order to separate the interest of each child beneficiary in the assets of IRA X, without such transfers constituting taxable distributions under section 408(d)(1) or rollovers under section 408(d)(3).

3. Required minimum distributions from IRA Y are calculated using the life expectancy of Decedent A.

4. The trustees of Trust T may transfer the assets of IRA Y by means of trustee-to-trustee transfers to IRAs titled IRA of "Decedent B fbo (name of child beneficiary), as beneficiary of Decedent A" in order to separate the interest of each child beneficiary in the assets of IRA Y, without such transfers constituting taxable distributions under section 408(d)(1) or rollovers under section 408(d)(3).

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.[1]

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 having been designated as 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

[1] Section 114 of the SECURE Act amended section 401(a)(9)(C) to provide that, for individuals who had not attained 70 ½ prior to January 1, 2020, the term “required beginning date” means April 1 of the calendar year following the calendar year in which the employee attains age 72.

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 interest 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.

The Further Consolidated Appropriations Act, 2020, P. L. 116-94 (the Act), was enacted on December 20, 2019. Section 401 of Division O of the Act, titled “Setting Every Community Up for Retirement Enhancement Act of 2019” (SECURE Act), amended section 401(a)(9) with respect to individuals who die after December 31, 2019. The amended provisions do not apply in this case because Decedent A died before the applicability date of the SECURE Act amendments.

Analysis

Under the facts presented, Trust T is the named beneficiary of IRA X. Trust T was established by Decedent A, was valid under the laws of State S, and became irrevocable at the death of Decedent A. In addition, relevant documentation relating to Trust T’s status as beneficiary of Decedent A’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 three 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 three child beneficiaries of Trust T are treated as having been designated as 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 is the designated beneficiary for purposes of determining the applicable distribution period under § 1.401(a)(9)-4, A-4. In this case, Child C is the beneficiary with the shortest life expectancy. In addition, because Decedent A's surviving spouse is not the sole beneficiary, the rule of § 1.401(a)(9)-5, Q&A-5(c)(1), applies.

With respect to your first 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 second ruling request, the facts indicate that each child beneficiary intends to accomplish a trustee-to-trustee transfer to separate that beneficiary's interest from the other beneficiaries' interests in IRA X. Such transfers will be into three separate IRAs established and maintained in the name of "Trust T fbo (name of child beneficiary), as beneficiary of Trust T."

In this case, consistent with Rev. Rul. 78-406, the portion of IRA X that is, in effect, maintained in the name of Trust T for the benefit of a child beneficiary, as beneficiary of Trust T 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 Trust T for the benefit of that child beneficiary, as beneficiary of Trust T, with no other change in title from the transferor IRA to the transferee IRA. Therefore, such transfers do not constitute taxable distributions under section 408(d)(1) or rollovers under section 408(d)(3).

With respect to your third ruling request, section 401(a)(9)(A)(2) provides that a trust will not be considered qualified unless the plan provides that the entire interest of each employee 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. Decedent A was

the designated beneficiary of IRA Y, for which Decedent B was the employee. Therefore, the remaining interest in IRA Y must be distributed following Decedent A's death over a period not extending beyond the life expectancy of Decedent A. Accordingly, required minimum distributions from each child beneficiary's transferee IRA derived from IRA Y must continue to be distributed at the same rate as distributions have been made from IRA Y to Trust T following Decedent B's death, over a period calculated using the remaining life expectancy of Decedent A.

With respect to your fourth ruling request, the facts indicate that each child beneficiary intends to accomplish a trustee-to-trustee transfer to separate that beneficiary's interest from the other beneficiaries' interests in IRA Y. Such transfers will be into three separate IRAs established and maintained in the name of "Decedent B fbo (name of child beneficiary), as beneficiary of Decedent A."

In this case, consistent with Rev. Rul. 78-406, the portion of IRA Y that is, in effect, maintained in the name of Decedent B for the benefit of a child beneficiary, as beneficiary of Decedent A 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 B for the benefit of that child beneficiary, as beneficiary of Decedent A, with no other change in title from the transferor IRA to the transferee IRA. Therefore, such transfers do not constitute taxable distributions under section 408(d)(1) or rollovers under section 408(d)(3).

Rulings

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

1. Each child beneficiary of Trust T is treated as having been designated as a beneficiary of IRA X in accordance with § 1.401(a)(9)-4, Q&A-5, for purposes of determining the distribution period under section 401(a)(9). Required minimum distributions from IRA X are calculated using the life expectancy of Child C, the oldest child beneficiary.

2. The trustees of Trust T may transfer the assets of IRA X by means of trustee-to-trustee transfers to IRAs titled IRA of "Trust T fbo (name of child beneficiary), as beneficiary of Trust T" in order to separate the interest of each child beneficiary in the assets of IRA X, without such transfers constituting taxable distributions under section 408(d)(1) or rollovers under section 408(d)(3).

3. Required minimum distributions from IRA Y are calculated using the life expectancy of Decedent A.

4. The trustees of Trust T may transfer the assets of IRA Y by means of trustee-to-trustee transfers to IRAs titled IRA of "Decedent B fbo (name of child beneficiary), as beneficiary of Decedent A" in order to separate the interest of each child beneficiary in

the assets of IRA Y, without such transfers constituting taxable distributions under section 408(d)(1) or rollovers under section 408(d)(3).

This letter assumes that IRA X and IRA Y have satisfied 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 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 penalties of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2021-1, 2021-1 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. 2021-1, § 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 representatives.

Sincerely,

/s/ Neil Sandhu

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

cc: