Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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UIC: 401.06-00
401.06-02

Contact Person:

Telephone Number:

In Reference to:
T:EP:RA:T3

Date:

NOV 6 2000

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Company M:

IRA X:

Dear [redacted] :

This is in response to your request for a private letter ruling dated , submitted on your behalf by your authorized representative, in which you request several letter rulings with respect to section 401(a)(9) of the Internal Revenue Code . In support of your request, your authorized representative has submitted the following facts and representations.

Taxpayer A was born on Date 1, 1920 and attained age 70 ½ on Date 6, 1990. Taxpayer A established IRA X with Company M on Date 5, 1986 and designated her children, Taxpayers B and C, as equal beneficiaries of her IRA X on the same date through the use of a form provided by the IRA X custodian entitled "Beneficiary Designation". Taxpayer B was born on Date 3, 1951, and Taxpayer C was born on Date 4, 1953. Thus, Taxpayer B is older than Taxpayer C.

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Taxpayer A's date of death was Date 2, 1999, which was subsequent to her required beginning date, with respect to the commencement of required minimum distributions under section 401(a)(9) of the Internal Revenue Code from IRA X, which was April 1, 1991.

Prior to her death, Taxpayer A received Code section 401(a)(9) required distributions from her IRA X which required distributions were based on her recalculated single life expectancy.

The IRA X Custodial Agreement (Agreement) contains the following pertinent provisions relating to minimum required distributions:

(1) Section 2 under Article IV of the Agreement provides:

"Unless otherwise elected by the time distributions are required to begin to the Depositor under paragraph 3, or to the surviving spouse under paragraph 4, other than in the case of a life annuity, life expectancies shall be recalculated annually. Such election shall be irrevocable as to the Depositor and the surviving spouse and shall apply to all subsequent years. The life expectancy of a nonspouse beneficiary may not be recalculated."

Taxpayer A, prior to attaining her required beginning date of April 1, 1991, did not file an election with the Custodian of IRA X to elect out of the recalculation method with respect to determining her required minimum distributions. Although she could have made such an election pursuant to the provisions of Section 2 of Article IV of the IRA Agreement, she did not.

(2) Section 10 under Article VIII of the IRA Agreement provides:

"For distributions requested pursuant to Article IV, life expectancy and joint life and last survivor expectancy shall be calculated based on information provided by the Depositor (or the Depositor's Authorized Agent, Beneficiary executor, or administrator) using the Expected Return Multiples in Section 1.72-9 of the Income Tax Regulations."

(3) Section 3 under Article IV of the IRA Agreement provides:

"The Depositor's entire interest in the Custodial Account must be, or begin to be, distributed by the Depositor's required beginning date, April 1 following the calendar year end in which the Depositor reaches age 70 1/2. By that date, the Depositor may elect, in a manner acceptable to the Custodian, to have the balance in the Custodial Account distributed in:

(a) A single-sum payment.
(b) An annuity contract that provides equal or substantially equal monthly, quarterly, or annual payments over the life of the Depositor.
(c) An annuity contract that provides equal or substantially equal monthly, quarterly, or annual

payments over the joint and last survivor lives of the Depositor and his or her designated Beneficiary.

(d) Equal or substantially equal annual payments over a specified period that may not be longer than the Depositor's life expectancy.

(e) Equal or substantially equal annual payments over a specified period that may not be longer than the joint life and last survivor expectancy of the Depositor and his or her designated Beneficiary"

Taxpayer A did not elect a specific distribution period with the Custodian of IRA X pursuant to the provisions of Section 3 of Article IV of the IRA X Agreement.

(4) Section 5 under Article IV of the IRA Agreement provides:

"In the case of distributions under paragraph 3, determine the initial life expectancy (or joint life and last survivor expectancy) using the attained ages of the Depositor and designated Beneficiary as of their birthdays in the year the Depositor reaches age 70 1/2."

(5) Section 4 under Article IV of the IRA Agreement provides:

"If the Depositor dies before his or her entire interest is distributed to him or her, the entire remaining interest will be distributed as follows:

(a) If the Depositor dies on or after distribution of his or her interest has begun, distribution must continue to be made in accordance with paragraph 3."

In the calendar year (1990) that Taxpayer A attained age 70 1/2, Taxpayer B had the shorter life expectancy of the two beneficiaries of Taxpayer A's IRA X, Taxpayers B and C . Taxpayer B's remaining life expectancy was 43.5 years in the calendar year that Taxpayer A attained age 70 1/2. The remaining term-certain life expectancy with respect to Taxpayer B as of the calendar year following the calendar year of Taxpayer A's death (2000), is 33.5 years. Taxpayer C's remaining single life expectancy was 45.4 years in the calendar year that Taxpayer A attained age 70 1/2. The remaining term certain period with respect to Taxpayer C as of calendar year 2000 is 35.4 years.

Based on the above, you, through your authorized representative, request the following letter rulings:

(1) That Taxpayer C is a designated Beneficiary for purposes of computing minimum required distributions under section 401(a)(9) of the Code with respect to IRA X;

(2) That Taxpayer C was timely selected as a designated beneficiary of IRA X for purposes of section 401(a)(9) of the Code;

(3) That Taxpayer A's use of the single recalculated life expectancy in determining her required minimum distributions from her IRA X during her lifetime does not preclude the use of the term certain life expectancy of the oldest designated beneficiary, Taxpayer B, in the calendar year after the death of Taxpayer A and subsequent calendar years; and

(4) That in determining the required minimum distributions after the death of Taxpayer A, commencing in calendar year 2000 and reduced by one for each calendar year thereafter, Taxpayer C may use the remaining term-certain life expectancy of Taxpayer B since Taxpayer B is the older of the two beneficiaries of IRA X, Taxpayers B and C.

With respect to your ruling requests, section 408(a) of the Code defines an individual retirement account as a trust which meets the requirements of sections 408(a)(1) through 408(a)(6). Section 408(a)(6) of the Code states 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 IRA trust is maintained. Section 401(a)(9) of the Code sets forth the general rules applicable to required minimum distributions from qualified plans.

Section 401(a)(9)(A)(ii) of the Code provides that a trust shall not constitute a qualified trust under this subsection unless the plan provides that the entire interest of each employee will be distributed, beginning not later than the required beginning date, in accordance with regulations, 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)(C) of the Code provides that, for purposes of this paragraph, with respect to IRAs, the term "required beginning date" means April 1 of the calendar year following the year in which the employee (IRA holder) attains age 70 1/2.

Section 401(a)(9)(B)(i) of the Code provides that, where distributions have begun under subparagraph (A)(ii), a trust shall not constitute a qualified trust under this section unless the plan provides that if --

(I) the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), and

(II) the employee dies before his entire interest has been distributed to him, the remaining portion of such interest will be distributed at least as rapidly as under the method of distributions being used under subparagraph (A)(ii) as of the date of his death.

Section 1.401(a)(9)-1 of the Proposed Income Tax Regulations ("Proposed Regulations"), Question & Answer D-2(a)(1), provides, in pertinent part, that designated beneficiaries are only individuals who are designated as beneficiaries under the plan. In general, it provides that an

individual may be designated as a beneficiary under the plan either by the terms of the plan or, if the plan provides, by an affirmative election by the employee (or the employee's surviving spouse) specifying the beneficiary. A beneficiary designated as such under the plan is an individual who is entitled to a portion of an employee's benefit, contingent on the employee's death or another specified event.

Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A D-3(a), provides that for purposes of calculating the distribution period described in section 401(a)(9)(A)(ii) (for distributions before death), the designated beneficiary will be determined as of the employee's required beginning date. If, as of that date, there is no designated beneficiary under the plan to receive the employee's benefit upon the employee's death, the distribution period is limited to the employee's life (or a period not extending beyond the employee's life expectancy).

In the present case, Taxpayer C was designated as a beneficiary under IRA X by an affirmative election specifying the beneficiary by Taxpayer A dated Date 5, 1986 through use of a form provided by the IRA X Custodian entitled "Beneficiary Designation." Pursuant to said form, Taxpayer C was entitled to a portion of Taxpayer A's benefit contingent on Taxpayer A's death. Since Taxpayer C was named a beneficiary of Taxpayer A's IRA X on Date 5, 1986, which was prior to Taxpayer A's required beginning date of April 1, 1991, Taxpayer C was selected in a timely manner for purposes of calculating the distribution period described in section 401(a)(9)(A)(ii) of the Code.

Accordingly, with regard to ruling request one, we conclude that Taxpayer C is a designated beneficiary for purposes of section 401(a)(9) with respect to IRA X. With respect to ruling request two, we conclude that Taxpayer C was timely designated a beneficiary of IRA X for purposes of section 401(a)(9) of the Code.

With respect to your remaining ruling requests, section 1.401(a)(9)-1 of the Proposed Regulations, Q&A E-8(a) provides, in pertinent part, that if the life expectancy of the employee (IRA holder) is being recalculated, the recalculated life expectancy will be reduced to zero in the calendar year following the calendar year of the IRA holder's death.

Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A E-8(b), provides guidance on calculating the applicable life expectancy when the employee's life expectancy is being recalculated and the life expectancy of his designated beneficiary is not recalculated. It provides, in relevant part, that if the designated beneficiary is not the employee's spouse and the life expectancy of the employee is being recalculated annually, the applicable life expectancy for determining the minimum distribution for each distribution calendar year will be determined by recalculating the employee's life expectancy but not recalculating the beneficiary's life expectancy. Such applicable life expectancy is the joint and last survivor expectancy using the employee's attained age as of the employee's birthday in the distribution calendar year and an adjusted age of the designated beneficiary. The adjusted age of the designated beneficiary is determined as follows: First, the beneficiary's applicable life expectancy is calculated based on

the beneficiary's' attained age as of the beneficiary's birthday in the calendar year described in E-1, reduced by one for each calendar year which has elapsed since that calendar year. The age (rounded if necessary to the higher age) in Table V of section 1.72-9 is then located which corresponds to the designated beneficiary's applicable life expectancy. Such age is the adjusted age of the designated beneficiary. As provided in paragraph (a), upon the death of the employee, the life expectancy of the employee is reduced to zero in the calendar year following the calendar year of the employee's death. Thus, for determining the minimum distribution for such calendar year and subsequent calendar years, the applicable life expectancy is the applicable life expectancy of the designated beneficiary determined under this paragraph.

Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A E-1(a), provides, generally, that for required distributions under section 401(a)(9)(A) of the Code, life expectancies are calculated using the employee's (and the designated beneficiary's) attained age as of the employee's birthday (and the designated beneficiary's birthday) in the calendar year in which the employee attains age 70 1/2.

Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A E-5(a)(1), provides, generally, that if more than one individual is designated as a beneficiary with respect to an employee as of the applicable date for determining the designated beneficiary, the designated beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the distribution period.

Because Taxpayer A's life expectancy was being recalculated, in the calendar year following the calendar year of her death, in accordance with Q&AE-8(a) of section 1.401(a)(9)-1 of the Proposed Regulations, her life expectancy was reduced to zero. Although her benefit was paid in the form of a single life expectancy, upon her death, her life expectancy was not the last applicable life expectancy because she timely designated her beneficiaries by her required beginning date in accordance with Q&A D-3(a) of the Proposed Regulations. Therefore, pursuant to Q&A E-8(b) of section 1.401(a)(9)-1 of the Proposed Regulations, for purposes of determining the minimum distribution in the calendar year after the death of Taxpayer A, the applicable life expectancy is the life expectancy of the designated beneficiary as determined under that section.

Since more than one individual was designated as a beneficiary with respect to Taxpayer A as of April 1, 1991, pursuant to section 1.401(a)(9)-1 of the Proposed Regulations, Q&A E-5(a)(1), the beneficiary who is the oldest and, correspondingly, who has the shortest life expectancy, will be the designated beneficiary for purposes of determining the distribution period under Taxpayer A's IRA X.

Therefore, with regard to ruling request three we conclude that Taxpayer A's use of the single recalculated life expectancy in determining the required minimum distributions during her

lifetime does not preclude the use of the term-certain life expectancy of the oldest designated beneficiary, Taxpayer B, in the calendar year following the calendar year of Taxpayer A's death.

As noted above, Taxpayer B had the shorter life expectancy of the two beneficiaries of Taxpayer A's IRA X as of her Code section 401(a)(9) required beginning date of April 1, 1991. Furthermore, Taxpayer A did not change the beneficiaries of her IRA X prior to her death. Therefore, Taxpayer B is the designated beneficiary whose life expectancy will be used when determining the minimum distribution period under IRA X for the calendar year commencing after the year of Taxpayer A's death, and for all subsequent years thereafter.

Pursuant to Q&As E-1(a) and E-8(b) of the Proposed Regulations, Taxpayer B's applicable life expectancy is calculated based on her attained age as of her birthday in the calendar year in which Taxpayer A attained age 70 1/2, reduced by one for each calendar year which has elapsed since that calendar year. Taxpayer B's remaining single life expectancy in the year that Taxpayer A attained age 70 1/2 (1990) was 43.5. Therefore, as of the calendar year 2000, the remaining term-certain period with respect to Taxpayer B is 33.5 years. Pursuant to Q&A E-8(b), this period is reduced by one for each calendar year subsequent to 2000.

Accordingly, with respect to ruling request four we conclude that Taxpayer C may use Taxpayer B's remaining term-certain life expectancy in determining her (Taxpayer C's) required minimum distributions after Taxpayer A's death, since Taxpayer B is the older of the two beneficiaries of IRA X, commencing in the calendar year 2000 and reduced by one for each calendar year thereafter.

The above ruling is contingent upon the continuation of IRA X as one described under section 408 of the Code.

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

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Pursuant to a power of attorney on file in this office, a copy of this letter ruling is being sent to your authorized representative.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Manager, Employee Plans
Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of letter ruling
Form 437