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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP - 3 2002

UICs: 401.06-00
401.06-02

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Taxpayer D:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Month 7:

Month 8:

IRA X:

Company Y:

Dear :

This is in response to the , letter written on your behalf by your authorized representative, as supplemented by correspondence dated , in which he, on your behalf, requests a series of letter rulings under section 401(a)(9) of the

Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 1, died on Date 2, 1999, having attained his "required beginning date" as that term is defined in Code section 401(a)(9)(C). Taxpayer A had attained both age 70 ½ and age 71 during the 1998 calendar year.

At his death, Taxpayer A maintained an individual retirement arrangement (IRA), IRA X, with Company Y. Your authorized representative asserts that IRA X meets the requirements of Code section 408(a).

On Date 3, 1998, which was prior to his Code section 401(a)(9) required beginning date, Taxpayer A named Taxpayers B, C, and D as the equal (1/3) beneficiaries of his IRA X. Taxpayers B and C are Taxpayer A's children. Taxpayer D, whose date of birth was Date 5, 1943, is older than either Taxpayer B or Taxpayer C.

Taxpayer B, as the requestor, of this letter ruling, was alive as of the date her request was received by the Internal Revenue Service. Taxpayer B's date of birth was Date 4, 1957.

During Month 7, 1999, Taxpayer B arranged for her pro-rata (1/3) interest in Taxpayer A's IRA X to be separated from the interests of Taxpayers C and D and to be maintained as a separate IRA in the name of Taxpayer A for the benefit of Taxpayer B. Said division and segregation occurred during Month 7, 1999, and Month 8, 2000. Since the date of separation, the IRA maintained for the benefit of Taxpayer B has had its gains, losses, contributions, and forfeitures (to the extent applicable) allocated without regard to the allocations made to any IRA(s) set up and maintained for the benefit of Taxpayers C and D. Furthermore, any expenses associated with the maintenance of the IRA benefiting Taxpayer B have been debited against said IRA without regard to any IRA(s) maintained for the benefit of Taxpayers C and D.

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

1. That Taxpayer A timely selected three individuals, Taxpayers B, C and D, as the beneficiaries of his IRA X;

2. that Taxpayer B may be treated as the designated beneficiary of the portion of Taxpayer A's IRA X which is now being maintained in the name of Taxpayer A for the benefit of Taxpayer B;

3. that, with respect to calendar years beginning with calendar year 2002, minimum required distributions from the IRA set up in Taxpayer A's name for the benefit of Taxpayer B may be based on the "Final" regulations published in the Federal Register on April 17, 2002, and in the Internal Revenue Bulletin on May 13, 2002;

4. that, with respect to calendar years beginning with the 2002 calendar year, minimum required distributions from the IRA set up in Taxpayer A's name for the benefit of Taxpayer B may be based on the Single Life Expectancy Table found in the "Final" regulations at § 1.401(a)(9)-9, Question and Answer-1; and

5. that, with respect to calendar year 2002 and subsequent calendar years, the required minimum distribution(s) that must be paid to Taxpayer B from the IRA set up and maintained in the name of Taxpayer A for Taxpayer B's benefit may be based on her remaining life expectancy of 38.7 years reduced by one for each calendar year subsequent to 2002. The determination of 38.7 is arrived at by determining the life expectancy of Taxpayer B during calendar year 2000, the calendar year following the calendar year of Taxpayer A's death, and reducing said life expectancy by one for each subsequent year.

With respect to your ruling requests, § 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 IRA trust is maintained.

Code § 401(a)(9)(A) provides, in general, that a trust will not be considered qualified unless the plan provides that the entire interest of each employee-

(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.

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

Code §401(a)(9)(B)(i) provides that, with respect to an employee/ plan participant who dies after distributions have begun in accordance with subparagraph (A)(ii) (after his

"required beginning date", as that term is defined in Code § 401(a)(9)(C)), distributions of the remaining portion of that employee's interest under a plan must be made at least as rapidly as under the method of distribution being used under subparagraph (A)(ii) as of the date of his death.

§ 401(a)(9)(E) of the Code defines the term "designated beneficiary" as any individual designated as a beneficiary by the employee.

On April 17, 2002, "Final" Income Tax Regulations were published in the Federal Register with respect to Code § 401(a)(9) and 408(a)(6). (See also 2002-19 I.R.B. 852, May 13, 2002). The Preamble to the "Final" Regulations indicates, in relevant part, that the regulations apply for determining required minimum distributions for calendar years beginning on or after January 1, 2003. However, with respect to calendar year 2002 distributions, a taxpayer may rely upon the "Final" regulations published during 2002. This letter ruling is based on the 2002 "Final" Regulations.

§1.401(a)(9)-2 of the "Final" regulations, Question and Answer-5, provides, in relevant part, that in order to satisfy the "at least as rapidly" rule of Code § 401(a)(9)(B)(i), under an individual account plan, the rules of § 1.401(a)(9)-5 apply.

§ 1.401(a)(9)-5 of the "Final" regulations, Q&A-5(a), provides, in general, that if an employee dies on or after his required beginning date, in order to satisfy the requirements of Code § 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 if the employee has a designated beneficiary as of the date determined under A-4 of § 1.401(a)(9)-4, is the longer of (i) the remaining life expectancy of the employee's designated beneficiary determined in accordance with either paragraph (c)(1) or paragraph (c)(2) of this A-5; or (ii) the remaining life expectancy of the employee determined in accordance with paragraph (c)(3) of this A-5.

§ 1.401(a)(9)-5 of the "Final" regulations, Q&A-5(c)(1), provides, in general, that, with respect to a non-spouse 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.

§1.401(a)(9)-4 of the "Final" 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 or IRA holder'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 death.

§1.401(a)(9)-4 of the "Final" 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, may not be a designated beneficiary.

§ 1.401(a)(9)-5 of the "Final" regulations, Q&A-7, provides, in general, that if an employee has designated more than one beneficiary as of the applicable date for determining the designated beneficiary, the beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the distribution period.

§ 1.401(a)(9)-8 of the "Final" regulations, Qs&As-2 and 3, provide the rules governing the establishment of separate accounts for purposes of computing Code § 401(a)(9) minimum required distributions. Q&A-3(a) provides, in relevant part, that a separate account is a portion of an employee's benefit determined by an acceptable separate accounting including allocating investment gains and losses, and contributions and forfeitures on a pro rata basis in a reasonable and consistent manner between such portion and any other benefits.

Q&A-2(a)(2) provides, in relevant part, that, with respect to defined contribution plans, a separate account must be established no later than the last day of the year following the calendar year of the employee's death. Q&A-2(a)(2) further provides that, for purposes of Code § 401(a)(9), the "separate account" rules are effective for years subsequent to the calendar year containing the date on which the separate accounts were established or the date of death (of the plan participant or IRA holder), if later.

Code § 408(d)(1) provides that, except as provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under § 72.

Code § 408(d)(3)(c) 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 said IRA by reason of the death of another if the acquiring individual is not the surviving spouse of said other individual.

Revenue Ruling 78-406, 1978-2 C.B. 157, 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 Code § 408(d). Furthermore, such a transfer does not constitute a rollover distribution.

Finally, 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.

In this case, Taxpayer A died during calendar year 1999. As of the date of his death, Taxpayer A maintained IRA X. Taxpayer A named Taxpayers B, C, and D as equal (1/3) beneficiaries of his IRA X. Taxpayer B was alive as of the date of this ruling request.

During the latter part of calendar year 1999, and the first half of calendar year 2000, Taxpayer B segregated her 1/3 interest in Taxpayer A's IRA X from the interests of Taxpayers C and D. As noted above, since the date of segregation, Taxpayer B's interest in Taxpayer A's IRA X has been maintained for the benefit of Taxpayer B without regard to any IRA(s) set up and maintained for the benefit of Taxpayers C and D.

Taxpayer B's date of birth was Date 4, 1957. Thus, Taxpayer B attained age 43 during calendar year 2000, the calendar year following Taxpayer A's date of death. The Single Life Expectancy Table found at § 1.401(a)(9)-9 of the "Final" Income Tax Regulations, Q&A-1, indicates that the remaining life expectancy for an individual age 43 is 40.7 years. Reducing 40.7 by two produces a life expectancy of 38.7.

The Service has considered the facts of this case and, based on the above, concludes with respect to your ruling requests as follows:

1. That Taxpayer A timely selected three individuals, Taxpayers B, C and D as the beneficiaries of his IRA X;

2. that Taxpayer B may be treated as the designated beneficiary of the portion of Taxpayer A's IRA X which is now being maintained in the name of Taxpayer A for the benefit of Taxpayer B;

3. that, with respect to calendar years beginning with calendar year 2002, minimum required distributions from the IRA set up in Taxpayer A's name for the benefit of Taxpayer B may be based on the "Final" regulations published in the Federal Register on April 17, 2002, and in the Internal Revenue Bulletin on May 13, 2002;

4. that, with respect to calendar years beginning with the 2002 calendar year, minimum required distributions from the IRA set

up in Taxpayer A's name for the benefit of Taxpayer B may be based on the Single Life Expectancy Table found in the "Final" regulations at § 1.401(a)(9)-9, Question and Answer-1; and

5. that, with respect to calendar year 2002 and subsequent calendar years, the required minimum distribution(s) that must be paid to Taxpayer B from the IRA set up and maintained in the name of Taxpayer A for Taxpayer B's benefit may be based on her remaining life expectancy of 38.7 years reduced by one for each calendar year subsequent to 2002. The determination of 38.7 is arrived at by determining the life expectancy of Taxpayer B during calendar year 2000, the calendar year following the calendar year of Taxpayer A's death, and reducing said life expectancy by one for each subsequent year.

This letter ruling is based on the facts and representations contained herein. Furthermore, it assumes that IRA X, and the IRA set up and maintained in the name of Taxpayer A for the benefit of Taxpayer B, either have met, meet, or will meet the requirements of Code § 408 at all times relevant thereto.

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

This letter is directed only to the taxpayer that requested it and is based solely on the representations made with respect thereto. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

Frances V. Sloan

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

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose