Internal Revenue Service

Department of the Treasury

Significant Index Nos.: 401.06-00; 408.00-00

Washington, DC 20224

199915063

Person to Contact:

Telephone Number:

Refer Reply to:

OP:E:EP:T:2

Date:

JAN 21 1999

LEGEND

Grantor =

IRA X =

Custodian A =

Beneficiary E =

Beneficiary F =

Dear :

This is in response to your request for a private letter ruling dated October 6, 1998, as amended by a letter dated November 12, 1998, submitted on your behalf by your authorized representative. In support of your request, your authorized representative has submitted the following facts and representations.

Grantor was born on April 12, 1923, and maintained IRA X with Custodian A. Grantor attained age 70 ½ during the calendar year 1993 and his date of death was July 11, 1997. Grantor's required beginning date, with respect to the commencement of required minimum distributions under section 401(a)(9) of the Internal Revenue Code ("Code"), from IRA X was April 1, 1994. Grantor designated Beneficiary E and Beneficiary F on December 14, 1993, each having a 50 percent interest in IRA X.

IRA X contains the following pertinent provisions relating to minimum required distributions:

(1) Section 8.4 (under Article VIII entitled "Minimum Distribution Requirements") of IRA X provides--

"Prior to his/her Required Beginning Date, the individual must choose whether or not to recalculate life expectancies for the Individual Participant and his/her spouse, if applicable, for purposes of determining his/her required minimum distribution. Life expectancy is computed by use of the expected return multiples in Tables V and VI of section 1.72-9 of the Income Tax Regulations. Unless otherwise elected by the Individual Participant at the time of commencement of distributions under Section 8.1 or, if applicable, by the surviving spouse where the Individual Participant dies before distributions have commenced, life expectancies of an Individual Participant or spouse Beneficiary shall be recalculated annually for purposes of distributions under Sections 8.1 and 8.2. An election not to recalculate shall be irrevocable and shall apply to all subsequent years. The life expectancy of a non-spouse Beneficiary shall not be recalculated. Instead, life expectancy will be calculated using the attained age of such Beneficiary during the calendar year in which the individual attains age 70 ½, and payments for subsequent years shall be calculated based on such life expectancy reduced by one for each calendar year which has elapsed since the calendar year life expectancy was first calculated."

(2) Section 8.1 of IRA X provides--

"Not later than the Required Beginning Date the Individual Participant may elect, on a form acceptable to Custodian A, to have the balance in IRA X distributed at least as rapidly as one of the following forms:

a. A single lump sum payment, payable not later than the Required Beginning Date;

b. In periodic payments at least annually over a period certain not extending beyond the life expectancy of the Individual Participant;

c. In periodic payments at least annually over a period certain not extending beyond the joint and last survivor expectancy of the Individual Participant and his/her Beneficiary.

Notwithstanding the fact that distributions may have commenced, the Individual Participant or Beneficiary may, by written notice to Custodian A, elect to receive a lump sum distribution of the balance in IRA X or elect that the balance in IRA X be distributed over a shorter period than the period which he/she previously elected."

(3) Section 8.2 of IRA X provides--

"If the Individual Participant dies before his/her entire interest is distributed, the entire remaining interest will be distributed as follows:

a. If the Individual Participant dies on or after distributions have begun under Section

8.1, the entire remaining interest must be distributed at least as rapidly as under the method of distribution elected by such Individual Participant."

Grantor, prior to attaining his required beginning date of April 1, 1994, did not file an election, with Custodian A to elect out of the recalculation method with respect to determining his required minimum distributions. Grantor could have made such an election pursuant to the provisions of Section 8.4 of IRA X, but he did not.

Grantor did not elect a distribution period with Custodian A pursuant to the provisions of Section 8.1. According to the information received from Custodian A, Grantor received his required minimum distributions during his lifetime based upon a single life expectancy which was recalculated each year.

Grantor continued to receive this as a partial distribution of his required minimum distribution for the calendar year 1997. During the early part of 1998, Beneficiary E and Beneficiary F received the balance of the required minimum distribution that Grantor would have received during the calendar year 1997 based upon his single recalculated life expectancy as determined in the calendar year 1997.

In the calendar year that Grantor attained age 70 ½ , Beneficiary E had the shortest life expectancy of the two designated beneficiaries. Beneficiary E was born on April 27, 1953, and her single life expectancy was 42.5 in the calendar year that Grantor attained age 70 ½ . The remaining term-certain with respect to Beneficiary E as of the calendar year following Grantor's death, 1998, was 37.5. Beneficiary F was born on March 3, 1956, and his single life expectancy was 45.4 in the year that Grantor attained age 70 ½ . The remaining term certain period with respect to Beneficiary F as of the calendar year 1998 was 40.4.

Based on the above, you request the following letter rulings:

(1) That Beneficiary E is a designated beneficiary for purposes of section 401(a)(9) of the Code with respect to IRA X.

(2) That Beneficiary E was timely selected as a designated beneficiary of IRA X for purposes of section 401(a)(9) of the Code.

(3) That Grantor's use of the single recalculated life expectancy in determining his required minimum distributions during his lifetime does not preclude the use of the term certain life expectancy of the oldest designated beneficiary in the calendar year after the death of Grantor.

(4) That in determining the required minimum distributions after the death of Grantor, that Beneficiary E may use the remaining term-certain life expectancy of

Beneficiary E since she is the oldest non-spouse designated beneficiary commencing in the calendar year 1998 and reduced by one for each calendar year thereafter.

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, the term "required beginning date" means April 1 of the calendar year following the later of (I) the year in which the employee attains age 70 ½ , or (II) the calendar year in which the employee retires.

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"), Q&A 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, Beneficiary E was designated as a beneficiary under IRA X by an affirmative election specifying the beneficiary by Grantor on December 14, 1993, through use of a form provided by Custodian A entitled "Beneficiary Designation or Method of Payment Request." Beneficiary E is entitled to a portion of Grantor's benefit contingent on Grantor's death. Since Beneficiary E was named a designated beneficiary on December 14, 1993, which was before Grantor's required beginning date of April 1, 1994, Beneficiary E 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 Beneficiary E 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 Beneficiary E was timely selected as a designated beneficiary of IRA X for purposes of section 401(a)(9) of the Code.

Section 401(a)(9)(D) of the Code permits an employee and his spouse to recalculate their life expectancies annually. Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A E-8(a), provides guidance on how an employee's life expectancy is recalculated and provides that upon the death of the employee, the recalculated life expectancy of the employee (or the employee's spouse) will be reduced to zero in the calendar year following the calendar year of death. In any calendar year in which the last applicable life expectancy is reduced to zero, the plan must distribute the employee's entire remaining interest prior to the last day of such year in order to satisfy section 401(a)(9).

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 ½.

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 Grantor's life expectancy was being recalculated, upon his death, in accordance with Q&A E-8(a) of section 1.401(a)(9)-1 of the Proposed Regulations, his life expectancy was reduced to zero. Although his benefit was paid in the form of a single life expectancy, upon his death, his life expectancy was not the last applicable life expectancy because he timely designated his beneficiaries by his 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 Grantor, 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 the Grantor as of April 1, 1994, 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 IRA X.

Therefore, with regard to ruling request three we conclude that Grantor's use of the single recalculated life expectancy in determining the required minimum distributions during his lifetime does not preclude the use of the term-certain life expectancy of the oldest designated beneficiary in the calendar year after Grantor's death.

Beneficiary E had the shortest life expectancy of the two designated beneficiaries on Grantor's required beginning date, April 1, 1994. Therefore, she should be 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 Grantor's death, and for all subsequent years thereafter.

Pursuant to Q&As E-1(a) and E-8(b) of the Proposed Regulations, Beneficiary E's applicable life expectancy is calculated based on her attained age as of her birthday in the calendar year in which Grantor attained age 70 ½, reduced by one for each calendar year which has elapsed since that calendar year. Her single life expectancy in the year that Grantor attained age 70 ½ was 42.5. Therefore, as of the calendar year 1998, the remaining term-certain period with respect to Beneficiary E is 37.5 years. Pursuant to Q&A E-8(b), this period is reduced by one for each calendar year subsequent to 1998.

Accordingly, with respect to ruling request four we conclude that Beneficiary E may use her remaining term-certain life expectancy in determining the required minimum distributions after Grantor's death, since she is the oldest non-spouse designated beneficiary, commencing in the calendar year 1998 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.

A copy of this ruling is being sent to your authorized representative in accordance with a power of attorney on file in this office.

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd
Chief, Employee Plans
Technical Branch 2

Enclosures:
Deleted copy of this letter
Notice of Intention to Disclose

cc:

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