



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

200453023

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

OCT - 4 2004

UICS: 401.06-00  
401.06-02  
408.00-00

SE.T.EP.PA.T3

LEGEND:

Taxpayer A:

Individual B:

Individual C:

Individual D:

Individual E:

Individual F:

Trust T:

Subtrust U:

Subtrust V:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

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IRA X:

Company M:

State N:

Dear [REDACTED] :

This is in response to the [REDACTED], request for letter rulings under section 401(a)(9) of the Internal Revenue Code submitted on your behalf by your authorized representative. The request for letter rulings is based on the following facts and representations.

Taxpayer A, died on Date 1, [REDACTED] having attained age 70 1/2. As of her date of death, Taxpayer A owned and maintained IRA X with Company M which your authorized representative asserts met the requirements of section 408(a) of the Internal Revenue Code. At her death, Taxpayer A was a resident of State N.

Taxpayer A's husband predeceased her.

On or about Date 3, [REDACTED], Taxpayer A established Trust T. Trust T was amended on or about Date 4, [REDACTED] with a subsequent amendment thereto. On or about Date 2, [REDACTED], Taxpayer A named Trust T as the beneficiary of his IRA X. Your authorized representative has asserted that Trust T is valid under the laws of State N.

Taxpayer A had five children including Individual C and Individual D. Individual C, whose date of birth was Date 7, [REDACTED], is the oldest of Taxpayer A's five children. One of Taxpayer A's five children, Individual D, disclaimed his interest in Trust T on or about Date 5, [REDACTED] which date fell within nine (9) months of Date 1, [REDACTED], the date of Taxpayer A's death. Your authorized representative asserts that Individual D's disclaimer met the requirements of Code § 2518. As a result of Individual D's disclaimer, his share in Trust T property, including IRA X, passed to his three (3) children including Individual B. Individual C is older than any of Individual D's three children.

Pursuant to section 12.01, Trust T became irrevocable at the death of Taxpayer A.

As of the date of Taxpayer A's death, Individuals E and F became the co-trustees of Trust T.

A copy of Trust T, as amended, was given to the custodian of IRA X on or about Date 6, [REDACTED], which was prior to October [REDACTED].

Section 8.01 of Trust T, as amended, provides, in relevant part, that on or after September 30 of the calendar year following the calendar year of Taxpayer A's death, the Successor Trustee(s) of Trust T shall not distribute any amounts from an individual retirement account (IRA) to or for the benefit of Taxpayer A's estate, any charity or any other non-individual beneficiary. After such September 30<sup>th</sup>, IRA distributions may only be made to individual beneficiaries.

Section 8.02 of Trust T provides for the creation of Subtrust U. Section 8.03 of Trust T provides for the creation of Subtrust V.

Section 8.02 of Trust T, in relevant part, reads as follows: "... If Grantor's husband does not survive her, then all of the assets of the Trust (Trust T) shall be set aside in a separate trust and held, administered and distributed according to Section 8.07".

IRA X is being administered in accordance with the provisions of Section 8.07 of Trust T.

Section 8.07(b)(1) of Trust T, as amended, provides, in relevant part, that any individual retirement account (IRA) allocated to Trust T shall be distributed to or held for only individual beneficiaries on or after the September 30<sup>th</sup> following the calendar year of Taxpayer A's death. Section 8.07(b)(1) of the amended Trust T further provides that after the said September 30<sup>th</sup>, IRA benefits "...may not be used or applied to pay Grantor's debts, taxes (including death taxes), expenses of administration or other claims against Grantor's estate, nor for payment of estate, inheritance or similar transfer taxes due on account of Grantor's death".

Section 8.07(b)(2)(D) of Trust T, as amended, provides, in relevant part, that the Successor Trustee(s) in its (their) sole discretion "may distribute any such portion of the net income and principal of each trust created hereunder for the benefit of each of Grantor's children, to each such child, in such proportion as it deems necessary or advisable to provide for the proper care, support, maintenance, education and general welfare of Grantor's children... The portion of the net income and principal not so distributed by the Successor Trustee shall be accumulated and added to the principal of each child's trust...".

Section 8.07(b)(2)(E) of Trust T, as amended, provides, in relevant part, that “Notwithstanding ...subsection 8.07(b)(2)... with respect to any Retirement Plan, as defined in Article XXIV, payable to any trust hereunder, Successor Trustee shall withdraw from such Retirement Plan, in each year, the minimum required distribution under Internal Revenue Code § 401(a)(9) for such year computed based on the life expectancy of the beneficiary of each such trust, and shall immediately distribute such amount to such beneficiary...”.

Section 8.07(b)(3)(E) of Trust T, as amended, provides, in relevant part, that “Notwithstanding ...subsection 8.07(b)(3)... with respect to any Retirement Plan, as defined in Article XXIV, payable to any trust hereunder, Successor Trustee shall withdraw from such Retirement Plan, in each year, the minimum required distribution under Internal Revenue Code § 401(a)(9) for such year computed based on the life expectancy of the beneficiary of each such trust, and shall immediately distribute such amount to such beneficiary...”.

Section 14.03(w) of Trust T, as amended, provides, in relevant part, that the Successor Trustees of Trust T shall not, on or after the September 30<sup>th</sup> following the calendar year of Taxpayer A’s death, distribute to or for the benefit of Taxpayer A’s estate, any charity or other non-individual beneficiary any Retirement Benefit payable to any trust created under Trust T. After the appropriate September 30<sup>th</sup>, only individual beneficiaries may receive IRA distributions.

Section 14.03(w) of the amended Trust T further provides that after the said September 30<sup>th</sup>, IRA benefits “...may not be used or applied to pay Grantor’s debts, taxes (including death taxes), expenses of administration or other claims against Grantor’s estate, nor for payment of estate, inheritance or similar transfer taxes due on account of Grantor’s death”.

Section 24.2(a) of Trust T, as amended, provides, in relevant part, that “...Successor Trustee may elect any payment option available under any Retirement Plan including, but not limited to, minimum distributions.... A Successor Trustee may roll over any distribution which is eligible for rollover treatment, may make trustee-to-trustee transfers of Retirement Benefits between Retirement Accounts, and may elect different options with respect to different Retirement Plans...”.

Section 24.3b of Trust T, as amended, in relevant part, defines Retirement Benefits to include any benefits payable to Trust T from an IRA defined in Code § 408(a). Any plan from which Retirement Benefits are distributed is styled a “Retirement Plan” or, alternately, a “Retirement Account”.

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Furthermore, the provisions of Trust T, as amended, require the Successor Trustees of Trust T to subdivide IRA X into seven sub-IRAs, each of which will be set up maintained in the name of Taxpayer A (Deceased) and each of which will be set F/B/O a specific beneficiary of IRA X through Trust T.

In accordance with the provisions of Trust T, as amended, and consistent with the laws of State N, the successor trustees of Trust T intend to divide IRA X, by means of a series of trustee-to-trustee transfers, into a number of sub-IRAs. Each sub-IRA will be set up and maintained in the name of Taxpayer A (Deceased) F/B/O an individual beneficiary of a portion of IRA X as determined under the provisions of the amended Trust T. Thus, one sub-IRA will be set up and maintained in the name of Taxpayer A (Deceased) for the beneficiary of Individual B. Such division of IRA X is expected to occur no later than September [REDACTED].

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

1. That, the division of IRA X into several sub-IRAs, including one in the name of Taxpayer A (Deceased) F/B/O Individual B, by means of a series of trustee-to-trustee transfers, comes within the purview of Revenue Ruling 78-406, and does not result in a taxable distribution to Individual B;
2. That Trust T is a valid "see through trust" within the meaning of section 1.401(a)(9)-4 of the "Final" Regulations, Question and Answer-5; and
3. That distributions from the sub-IRA set up after the trustee-to-trustee-transfer referenced herein and maintained in the name of Taxpayer A (Deceased) F/B/O Individual B may be taken over the life expectancy of Individual C.

With respect to your ruling requests, Code section 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.

Code § 401(a)(9)(B)(i) provides, in general, that if a plan participant (IRA holder) dies after the distribution of his interest has begun in accordance with subparagraph (A)(ii) (after his required beginning date), then the remaining portion of his interest must 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.

Code § 401(a)(9)(C) 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 attains age 70 1/2.

With respect to your ruling requests, "Final" Income Tax Regulations under Code sections 401(a)(9) and 408(a)(6) were published in the Federal Register at 67 Federal Register 18987-19028 (April 17, 2002), and in the Internal Revenue Bulletin at 2002-19 I.R.B. 852 (May 13, 2002). The Preamble to the "Final" Regulations, in relevant part, provide that the regulations apply for determining required minimum distributions for calendar years beginning after January 1, 2003. For determining required distributions for calendar year 2002, taxpayers may rely on the 1987 proposed regulations, the 2001 proposed regulations, or the "Final" Regulations..

Section 1.401(a)(9)-2 of the "Final" regulations, Question & Answer-5, provides, in general, that, if distributions have begun in accordance with § 401(a)(9)(A)(ii) and the employee dies before his entire interest has been distributed to him, the remaining portion of such interest must be distributed at least as rapidly as under the distribution method being used under § 401(a)(9)(A)(ii) as of the date of death. The method of determining the amount required to be distributed for each distribution calendar year following the calendar year of death from an individual account plan is determined in accordance with § 1.401(a)(9)-5 of the regulations.

Section 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 is determined as follows:

(1) If the employee has a designated beneficiary as of the date determined under A-4 of § 1.401(a)(9)-4, the longer of—

(i) the remaining life expectancy of the employee's designated beneficiary determined in accordance with paragraph (c)(1) or (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.

(2) If the employee does not have a designated beneficiary as of the date determined under A-4 of § 1.401(a)(9)-4, the remaining life expectancy of the employee determined in accordance with paragraph (c)(3) of this A-5.

Section 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.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-1, provides, in relevant part, that a designated beneficiary is an individual who is designated as a beneficiary under a plan either by the terms of the plan or by an affirmative election by the employee. Q&A-1 further provides that a person who takes under a will or otherwise under applicable state law will not be a designated beneficiary unless that individual also takes under a plan.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-7(a)(1) provides, in summary, that except as otherwise provided in paragraph (c) of this A-7 (not pertinent to this ruling request), 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 named beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the applicable distribution period.

Section 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 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.

Section 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. However, Q&A-5 of section 1.401(a)(9)-4 provides that beneficiaries of a trust with respect to the trust's interest in an employee's benefit may be treated as designated beneficiaries if the following requirements are met:

(1) The trust is valid under state law or would be but for the fact that there is no corpus.

(2) The trust is irrevocable or the trust contains language to the effect it becomes 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 A-1 of this section from the trust instrument.

(4) The documentation described in A-6 of this section has been provided to the plan administrator.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-6(b), provides, generally, with respect to required minimum distributions after the death of the employee, that documentation described therein must be provided by the trustee of the trust/beneficiary to the plan administrator by October 31 of the calendar year following the calendar year in which the employee died.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-5(c), provides, in relevant part, that the separate account rules under A-2 of § 1.401(a)(9)-8 are not available to beneficiaries of a trust with respect to the trust's interest in the employee's benefit.

As previously noted, taxpayers must compute minimum required distributions for calendar years beginning with calendar year 2003 in accordance with the "Final" regulations referenced above.

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 section 408(d). Furthermore, such a transfer does not constitute a rollover distribution.

Additionally, a trustee to trustee transfer, as described in Rev. Rul. 78-406, does not constitute a distribution or payment as those terms are defined for purposes of Code section 408(d).

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.

As noted above, if distributions are made to a trust, even if the trust is a "see-through" trust within the meaning of Q&A-5 of § 1.401(a)(9)-4 of the "Final" Regulations, the separate account rules of A-2 of § 1.401(a)(9)-8 of the "Final



Regulations” are not available to the beneficiaries of the trust. Thus, in general, each beneficiary of a trust must receive minimum required distributions over the life expectancy of the eldest beneficiary.

For purposes of determining which trust beneficiary’s life expectancy will be used to determine the minimum required distribution payout period, the term “beneficiary”, in general, includes individuals or entities who are not eligible to be treated as “designated beneficiaries” within the meaning of Code section 401(a)(9).

In this case, the ruling request indicates that Trust T is valid under the laws of State N and that it became irrevocable at the death of Taxpayer A. Furthermore, a copy of Trust T, as amended, was provided to the custodian of IRA X before October [REDACTED], and the identity of the trust beneficiaries are determinable by perusing the terms of the trust.

With respect to the issue raised in this ruling request of which Trust T beneficiaries must be considered in determining who is the designated beneficiary of IRA X, we note that, although Trust T does not “wall off” IRA X from being used to pay Taxpayer A’s creditors, Taxpayer A’s estate expenses etc., the terms of Trust T, as amended, do provide that, after September [REDACTED], distributions from IRA X may only be made to individuals and cannot be used to pay creditors, estate expenses, taxes etc. Thus, as of September [REDACTED] the only beneficiaries of Trust T at Taxpayer A’s death who remain such are Taxpayer A’s four children (excluding Individual D who timely disclaimed his interest in Trust T assets including IRA X), and Individual D’s three children, Taxpayer A’s three grandchildren, including Individual B. Thus, only the four children and three grandchildren must be considered for purposes of determining who is the designated beneficiary of IRA X.

With further respect to this issue, we note that, although the provisions of Trust T require the Successor Trustees thereof to divide IRA X into seven sub-IRAs, pursuant to § 1.401(a)(9)-4 of the “Final” regulations, Q&A-5(c), said subdivision will not result in “separate account” treatment for purposes of determining the applicable Code § 401(a)(9) payout period. Thus, for purposes of determining the payout period with respect to the sub-IRA to be set up to benefit Individual B, all of the beneficiaries of Trust T as of September [REDACTED] must be considered. As noted above, Individual C is the oldest of the seven Trust T beneficiaries.

Finally, we note that the facts of this case indicate that the sub-IRA to be created in the name of Taxpayer A (Deceased) to benefit Individual B will be created by a trustee-to-trustee transfer, and that no distribution will be made to Individual B in conjunction with said transfer.

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Thus, based on the specific facts and representations surrounding this ruling request, we conclude as follows:

1. That, the division of IRA X into several sub-IRAs, including one in the name of Taxpayer A (Deceased) F/B/O Individual B, by means of a series of trustee-to-trustee transfers, comes within the purview of Revenue Ruling 78-406, and does not result in a taxable distribution to Individual B;
2. That Trust T is a valid "see through trust" within the meaning of section 1.401(a)(9)-4 of the "Final" Regulations, Question and Answer-5; and
3. That distributions from the sub-IRA set up after the trustee-to-trustee-transfer referenced herein and maintained in the name of Taxpayer A (Deceased) F/B/O Individual B may be taken over the life expectancy of Individual C.

This ruling letter is based on the assumption that IRA X either has met, is meeting, or will meet the requirements of Code § 408(a) at all times relevant thereto. It also assumes that Trust T, and Subtrust U created thereunder, are valid under the laws of State N as represented. Finally, it assumes that the transferee IRA set up and maintained in the name of Taxpayer A F/B/O Individual B will meet the requirements of Code § 408(a) 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.

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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  
Manager, Employee Plans  
Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose