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

200235041

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UICs: 401.06-02
408.06-00

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Taxpayer D:

Taxpayer E:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Date 8:

Month 9:

State V:

IRA X:

Trust W:

Trust X:

Trust Y:

Subtrust Z:

Dear

This is in response to the , request for private letter ruling submitted on your behalf by your authorized representative, as supplemented, in which you, through your representative, request several letter rulings. The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 1, , died on Date 2, , having reached his "required beginning date" as that term is defined and applied in § 401(a)(9)(C)(ii)(II) of the Internal Revenue Code. As of his death of death, Taxpayer A owned IRA X.

Taxpayer A was survived by a son, Taxpayer B, whose date of birth was Date 3, ; a daughter, Taxpayer C, whose date of birth was Date 4, , and another daughter, Taxpayer D, whose date of birth was Date 5, . Thus, Taxpayer C is the eldest of Taxpayers B, C, and D. Taxpayers B, C, and D are alive as of the date of this ruling request.

On Date 6, , Taxpayer A named Trust W as the beneficiary of his IRA X. On Date 7, Taxpayer A executed Trust X which restated and superceded Trust W. On Date 8, Taxpayer A executed Trust Y which restated and superceded Trust X. Thus, at Taxpayer A's death, Trust Y was the beneficiary of Taxpayer A's IRA X.

Article VI of Trust Y provides for a Subtrust Z. Article VI.A of Subtrust Z provides that, upon the death of Taxpayer A, the trustee of Trust Y will transfer and deliver to Taxpayer E, outright and free of trust, trust assets equal in value to 25% of the value of the trust fund as of the date of Taxpayer A's death.

Article VI.B of Subtrust Z provides, in short, that the remaining portion of the trust estate is to be divided into equal, separate shares, for the benefit of Taxpayer A's surviving children.

Article VI.B.1., Part A(a), of Subtrust Z, provides that all of the net income of the share allocated to a particular child of Taxpayer A shall be distributed currently to such child.

Article VII, Part A, of Trust Y, provides that the trustee of Trust Y may invade the principal of the share allocated to the particular child of Taxpayer A if necessary to provide for the health, education, maintenance and support of a beneficiary of said share.

Article VI.B.1., Part A(b), provides that at the death of such child, all of the then remaining amount of principal shall be distributed as he or she shall have effectively appointed by the last instrument in writing which such child shall have delivered to trustee during such child's lifetime or by such child's probated will, provided that such appointment is not exercised in favor of such child, such child's estate, such child's creditors, the creditors of such child's estate, or any "Disqualified Appointee".

Article XV.I of Trust Y defines "Disqualified Appointee" as (1) any individual born in a calendar year prior to the calendar year of birth of my oldest living issue at the time of my death, (2) any person other than a trust or an individual, or (3) any trust that may have as a beneficiary an individual born in a calendar year prior to the calendar year of birth of my oldest living issue at the time of my death.

Article VIII.F of Trust Y provides, in relevant part, that the Trustee shall not charge any debts, administrative expenses or taxes of the estate against property coming from an IRA of which the trust is a beneficiary.

Article I of Trust Y provides that Trust Y was revocable by Taxpayer A during his lifetime. Thus, at the death of Taxpayer A, Trust Y became irrevocable.

Your authorized representative has asserted on your behalf that Trust Y is valid under the laws of State V, the state of Taxpayer A's domicile at his death. Furthermore, the identity of the beneficiaries of Trust Y was provided to the administrator of IRA X during calendar year

During Month 9, Taxpayer B, Taxpayer C, Taxpayer D, and Taxpayer E created four sub-accounts within IRA X. Each separate account constitutes a portion of Taxpayer A's account balance under IRA X which reflects the appropriate beneficiary's interest in Taxpayer A's IRA X using separate accounting that allocates investment gains and losses, and contributions and forfeitures, on a pro rata basis in a consistent manner between such portion and any other benefit.

Each of the four separate accounts was established for the benefit of a particular beneficiary in the name of the deceased, Taxpayer A. Each beneficiary has the right to direct investment of his/her separate account as well as withdraw funds with regard to his or her account. The beneficiary of a distinct account has access solely to his or her sub-account.

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

(1) Trust Y is a valid "see-through" trust within the meaning of § 1.401(a)(9)-4 of the "Final" Income Tax Regulations, Question and Answer 5;

(2) § 401(a)(9) minimum required distributions may be made from IRA X based on the life expectancy of Taxpayer C, the eldest of Taxpayers B, C, and D, to Trust Y for the benefit of Taxpayers B, C, and D, some of the beneficiaries thereof; and

(3) The creation of the separate sub-accounts, referenced above, did not affect the tax deferred status of the funds held in IRA X and will not be treated as a taxable distribution (or distributions).

With respect to your ruling requests, § 401(a)(9) of the Internal Revenue Code, in general, sets down the rules governing minimum required distributions from retirement plans qualified within the meaning of Code § 401(a). Code § 401(a)(9)(C)(i) provides, in short, that distributions to a qualified plan participant must begin no later than April 1 of the calendar year following the later of-(I) the calendar year in which the employee attains age 70 ½, or (II) the calendar year in which the employee retires. Subclause (II) of clause (i) does not apply to a "5-percent owner" as that term is defined in Code § 416, or for purposes of sections 408(a)(6) or (b)(3). .

Code § 408(a)(6) provides that under regulations prescribed by the Secretary rules similar to the rules of § 401(a)(9) and the incidental death benefit requirements of § 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

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 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.

"Final" Income Tax Regulations under §§ 401(a)(9) and 408(a)(6) were published in the Federal Register at 67 Federal Register 18987-19028 (April 17, 2002)

("Final" regulations). The Preamble to the "Final" regulations provides, in relevant part, that the "Final" regulations apply for determining required minimum distributions for calendar years beginning on or after January 1, 2003. For determining required distributions for calendar year 2002, taxpayers may rely on either the 2001 proposed regulations or the "Final" regulations..

Proposed Regulations under §401(a)(9) were revised during calendar year 2001 and published in the Internal Revenue Bulletin at 2001-11 I.R.B. 865 (March 12, 2001) ("New" proposed regulations). The Preamble to the "New" proposed regulations provides, in relevant part, that they are applicable for determining required minimum distributions for calendar years beginning on or after January 1, 2002. Furthermore, taxpayers may rely upon them for determining minimum required distributions for calendar year 2001.

§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)-2 of the "New" proposed regulations, Question and Answer-5, contains similar language.

§ 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, 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..

The "New" proposed regulations provide at § 1.401(a)(9)-5, Q&A-5(a)(1) that if an employee(IRA holder) dies on or after his required beginning date, in order to satisfy § 401(a)(9)(B)(i), if the employee or IRA holder has a designated beneficiary that is not his spouse, as of the date determined under A-4 of § 1.401(a)(9)-4, the applicable distribution period is the remaining life expectancy of the designated beneficiary determined in accordance with paragraph (c)(1) of 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.

The "New" proposed regulations contain similar language at § 1.401(a)(9)-5, Q&A-5(c)(1) .

§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 "New" proposed regulations, Q&A-4, provides, in relevant part, that an employee's designated beneficiary will be determined based on the beneficiaries designated as of the last day of the calendar year following the calendar year of the employee's 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. However, Q&A-5 of §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.

The "New" proposed regulations contain similar language at § 1.401(a)(9)-4, Q&A-5.

§ 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.

The "New" proposed regulations at § 1.401(a)(9)-4, Q&A-6(b), provide, 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 the last day of the calendar year following the calendar year in which the employee died.

§ 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)-4 of the "Final" regulations, Q&A-5(c), provides, in relevant part, that the rules of A-7 of § 1.401(a)(9)-5 (above) apply with respect to payments to a trust having more than one beneficiary.

The "New" proposed regulations contain similar language at sections 1.401(a)(9)-5, Q&A-7, and 1.401(a)(9)-4, Q&A-5(c).

§ 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.

§ 1.401(a)(9)-8 of the "New" proposed regulations contains similar language at Qs&As-2 and 3.

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, Trust Y is the beneficiary of Taxpayer A's IRA X. Trust Y became irrevocable at the death of Taxpayer A. Furthermore, it has been represented that Trust Y is valid under the laws of State V. Additionally, the identities of the beneficiaries of Trust Y, and of Subtrust Z, a subtrust created under the terms of Trust Y, are ascertainable from the language of Trust Y. Finally, said identities have been provided to the administrator of IRA X.

Thus, based on the above, the Service concludes with respect to your first ruling request as follows:

1. Trust Y is a valid "see-through" trust within the meaning of § 1.401(a)(9)-4 of the "Final" Income Tax Regulations, Question and Answer 5.

With respect to your second ruling request, as noted above, Trust Y is a valid "see-through" trust as that term is used for Code § 401(a)(9) purposes. Thus, the life expectancies of the beneficiaries must be scrutinized in order to determine which beneficiary is the "designated" beneficiary whose life expectancy will be used to determine the payout period with respect to Taxpayer C's share in IRA X.

Taxpayer C is a beneficiary of the share of IRA X that has been allocated to her. Additional beneficiaries include individuals who cannot be older than Taxpayer C. Thus, any potential beneficiary of Taxpayer C's interest in IRA X must be no older than Taxpayer C. Therefore, as the oldest potential beneficiary, Taxpayer C has a life expectancy that is shorter than that of any other potential beneficiary. Thus, Taxpayer C's life expectancy must be used to determine the Code § 401(a)(9) distribution period with respect to her share of IRA X.

Thus, with respect to your second ruling request, the Service concludes as follows:

2. § 401(a)(9) minimum required distributions may be made from IRA X based on the life expectancy of Taxpayer C, the eldest of Taxpayers B, C, and D, to Trust Y for the benefit of Taxpayers B, C, and D, some of the beneficiaries thereof.

With respect to your third ruling request, Code § 408(d) sets down the rules governing distributions from IRAs and the taxation thereof. Furthermore, as noted above, Rev. Rul. 78-406 provides for transfers of amounts between IRAs that do not constitute taxable distributions even if the transfer is accomplished at the behest of the IRA holder or IRA beneficiary.

In this case, Taxpayer A's IRA X was divided into four accounts. Each account was maintained in the name of Taxpayer A for the benefit of a distinct beneficiary thereof. Said division was accomplished by the creation of separate sub-accounts under IRA X. Each sub-account bore its own identification number. None of the beneficiaries of IRA X, including Taxpayer C, received a distribution of any amount from IRA X at the time IRA X was subdivided.

Thus, based on the above, the Service concludes as follows with respect to your third ruling request:

3. The creation of the separate sub-accounts, referenced above, did not affect the tax deferred status of the funds held in IRA X and will not be treated as a taxable distribution (or distributions).

This letter ruling is based on the facts and representations contained herein. Furthermore, it assumes that IRA X, and the sub-accounts created there under, 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, the original 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
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Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose