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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NOV 21 2002 200307095

401.00-00, 408.00-00

T:EP:RA:T4

LEGEND:
Taxpayer A =
Decedent B =
IRA X =
Custodian T =
State C =

Dear :

This letter is in response to your ruling request dated September 12, 2001, as supplemented by your letters of February 12, 2002, August 26, 2002, September 25, 2002 and November 4, 2002 regarding distributions from Decedent B's IRA X to Taxpayer A. Specifically, the rulings requested are whether Taxpayer A is permitted to use his life expectancy to determine the required minimum distributions from IRA X and whether such distributions commenced timely.

Decedent B died on December 14, 1999 in State C. Prior to Decedent B's death, she had established IRA X with Custodian T. On October 30, 1998, Decedent B designated her three children as beneficiaries in equal shares of IRA X. Taxpayer A is one of Decedent B's three children.

Decedent B had not attained her required beginning date as of her date of death, December 14, 1999. Decedent B therefore had not begun receiving minimum required distributions from IRA X.

Prior to December 31, 2000, IRA X was subdivided in separate accounts for each of Decedent B's beneficiaries under IRA X. Each account was titled in the name of Decedent B for the benefit of the respective child. The account has been maintained as a separate account since the date of division. As a result, all gains, losses and expenses of each of the separate accounts have been determined without regard to the investment experience of the other separate accounts. Prior to December 31, 2000, Taxpayer A commenced taking distributions from his separate account under IRA X.

Based on the foregoing facts and representations, you request that

(1) the distributions to Taxpayer A commenced within the time required by section 401(a)(9) of the Internal Revenue Code (the "Code") and the proposed regulation promulgated thereunder, and

(2) Taxpayer A, as a designated beneficiary of Decedent B, is permitted to use his life expectancy to determine the required minimum distribution from IRA X.

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).

Under section 401(a)(9)(B)(ii), if an employee dies before distribution has begun in accordance with section 401(a)(9)(A)(ii), the entire interest of the employee must be distributed within five years after the death of the employee.

Section 401(a)(9)(B)(iii) provides an exception to the five-year rule if any portion of an employee's interest is payable to a designated beneficiary over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary) and such distributions begin not later than one year after the date of the employee's death. Section 1.401(a)(9)-1 of the Proposed Income Tax Regulations ("Proposed Regulations") Question and Answer C-3 provides that the exception provided in section 401(a)(9)(B)(iii) of the Code will be satisfied if the distributions to a non-spouse beneficiary begin on or before December 31 of the calendar year immediately following the year in which the employee dies.

In this case, benefits were payable to Taxpayer A as a designated beneficiary of IRA X at the date of Decedent B's death and he began to receive distributions from IRA X on or before December 31, 2000. Accordingly, with respect to the first ruling request it is concluded that distributions to Taxpayer A will qualify for the exception to the five-year rule under section 401(a)(9)(B)(iii) of the Code.

Section 1.401(a)(9)-1 of the 1987 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.

Q&A-H-2(b) of Proposed Regulations section 1.401(a)(9)-1 provides, with respect to distributions under section 401(a)(9)(B)(iii) of the Code, that if as of an employee's death, the beneficiaries of a separate account in an individual account differ from the beneficiaries of other separate accounts in the individual account of the employee, such separate account need not be aggregated with other separate accounts in order to determine whether the distributions from such separate account satisfy section 401(a)(9). Instead, the rules in section 401(a)(9) may separately apply to such separate account. Thus, if the employee designated a different beneficiary for each separate account, each separate account may be distributed over the life or life expectancy of the designated beneficiary for that separate account.

Q&A-2(b) of the revised 2001 Proposed Regulations section 1.401(a)(9)-8 provides, with respect to distributions under section 401(a)(9)(B)(iii) of the Code, that if as of the end of the year following the year containing the employee's date of death, the beneficiaries with respect to a separate account under the plan differ from the beneficiaries with respect to the other separate accounts of the employee under the plan, such separate account under the plan need not be aggregated with other separate accounts under the plan in order to determine whether the distributions from such separate account under the plan satisfy section 401(a)(9). Instead, the rules in section 401(a)(9) may separately apply to such separate account under the plan.

In this regard, Q&A-H-2(b) of Proposed Regulations section 1.401(a)(9)-1 and Q&A-2(b) of revised Proposed Regulations section 1.401(a)(9)-8 provide that if the beneficiaries of a separate account under the plan differ from the beneficiaries of other separate accounts under the plan, the rules of section 401(a)(9) may separately apply to such separate account under the plan.

With respect to request two it is concluded that Decedent B's beneficiary designation naming her children in equal, discernable shares created separate accounts as that term is defined under section 1.401(a)(9)-1 Q&A H-2A and therefore, Taxpayer A may use his own life expectancy in calculating required minimum distributions for such beneficiary's respective account pursuant to section 1.401(a)(9)-I Q&A H-2(b).

With further regard to this ruling request, "Final" Income Tax Regulations under Code sections 401(a)(9) and 408(a)(6) were published in the Federal Register on April 17, 2002. (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

purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2003.

§ 1.401(a)(9)-8 of the "Final" Regulations, Q&A-2, governs the creation of separate accounts for purposes of Code § 401(a)(9). In relevant part, Q&A-2(a)(2) provides, with respect to defined contribution plans, that a separate account need not be aggregated with other separate accounts for purposes of determining minimum required distributions with respect to calendar years subsequent to the calendar year in which the separate accounts are established. Furthermore, Q&A-2(a)(2) provides that, in the case of a distribution described in § 401(a)(9)(B)(iii), separate accounts must be established no later that the last day of the year following the year of the plan participant's (IRA holder's) death. As noted above, Decedent B died during calendar year 1999, and her IRA X was subdivided into three separate accounts during calendar year 2000.

This ruling letter assumes that Decedent B's IRA X has met the requirements of Code section 408(a) at all times relevant thereto.

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.

This letter ruling was written by of this Group 4 who can be reached at

Sincerely,

Alan Pipkin, Manager
Employee Plans, Technical Group 4

Enclosures:

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Form 437