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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Contact Person:

Telephone Number:

In Reference to:
OP:E:EP:T:1
Date: 5/12/99

Legend:

Taxpayer A =
Taxpayer B =
Taxpayer C =
IRA X =

Taxpayer B's IRAs =

Dear :

This letter is in response to a request for a private letter ruling dated August 10, 1998, as supplemented by additional correspondence dated August 25, 1998, November 4, 1998, February 11, 1999, and March 12, 1999, submitted on your behalf by your authorized representative, concerning the division and distribution of an Individual Retirement Arrangement ("IRA").

The facts on which the ruling requests are based are as follows:

Taxpayer A established IRA X and designated Taxpayer B, her husband, as the primary beneficiary. Taxpayer A, whose required beginning date was April 1, 1997, died on February 16, 1997. Taxpayer B's date of birth was May 6, 1904. On June 9, 1997, Taxpayer B caused a transfer of the assets in IRA X to eight other IRAs in the name of Taxpayer B. He invested the assets of the IRAs in eight different mutual funds and selected six primary and equal beneficiaries (including Taxpayer C). Taxpayer B's beneficiary designation form stated that each beneficiary would be entitled to a one-sixth interest in each of the eight IRAs.

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Taxpayer B died on March 19, 1998, and was survived by Taxpayer C and the other five beneficiaries. Prior to the date of his death, Taxpayer B did not receive any distributions from the eight IRAs. Prior to December 31, 1998, Taxpayer C and the other five beneficiaries directed the custodian (by letter) of seven of the eight IRAs to divide each of the seven into six separate accounts by means of direct transfer. Seven of the eight IRA mutual fund accounts were divided. The eighth mutual fund IRA account totalling $3,761.40 was distributed in equal amounts of $626.90 to each of the six beneficiaries. With respect to the separate accounts, there has been an allocation of gains and losses and separate accounting for each beneficiary's interest since the date of Taxpayer B's death.

Based on the foregoing facts and representations, you request the following rulings:

1) That Taxpayer C and the five beneficiaries (six beneficiaries) are designated beneficiaries for purposes of section 401(a)(9) of the Internal Revenue Code ("Code") with respect to the seven IRAs.

2) That Taxpayer C as a beneficiary of Taxpayer B's seven IRAs was timely selected prior to Taxpayer B's first required distribution date for purposes of determining required minimum distributions under Code section 401(a)(9).

3) That Taxpayer C did not incur any income tax liability or excise tax penalty with respect to the establishment prior to December 31, 1998, of separate accounts maintained in the name of Taxpayer B, deceased IRA owner, for Taxpayer C's respective one-sixth (1/6) interest in each of the seven IRAs.

4) That Taxpayer B's first required distribution date with respect to receiving any required minimum distributions under Code section 401(a)(9) from the IRAs was December 31, 1998.

5) That Taxpayer C may elect a life expectancy distribution method with respect to Taxpayer B's seven IRAs held for her respective benefit by no later than December 31, 1999.

6) That in determining the amount of the required minimum distributions under the life expectancy method, Taxpayer C shall use her allocated one/sixth (1/6) share of the value of Taxpayer B's seven IRAs as of December 31, 1998, and divide that amount by her life expectancy under the IRS single life expectancy table based upon her age attained in the calendar year 1999.

7) That Taxpayer C may receive said payout under the life expectancy method as long as the seven IRAs are maintained in the name of Taxpayer B, deceased IRA owner, and each beneficiary makes the appropriate life expectancy election by no later than December 31, 1999.

8) That Taxpayer C, who is age 61 in calendar year 1999, may use a life expectancy based upon her single life expectancy determined in the calendar year 1999 under regulation section 1.72-9, Table V in determining her required minimum distributions from her one-sixth (1/6) interest in the seven IRAs.

9) That under the life expectancy method, Taxpayer C would determine her required minimum distribution for the calendar year 1999 from the seven IRAs based upon the value of her interest in the seven IRAs as of December 31, 1998, by dividing that amount by her single life expectancy determined in calendar year 1999 under regulation section 1.72-9, Table V.

10) That Taxpayer C will be deemed to have elected the life expectancy method with respect to her interest in the seven IRAs if she calculated her required minimum distributions from such IRAs then held for her respective benefit as of December 31, 1998, by dividing that amount by her single life expectancy determined in the calendar year 1999 under regulation section 1.72-9, Table V, provided that she receives the minimum distribution by December 31, 1999, from such IRAs that are held for her respective benefit.

With respect to ruling requests 1, 2 and 4, Code section 408(a)(6) states that under regulations prescribed by the Secretary, rules similar to the rules of Code 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 an IRA is

maintained. Similarly, section 1.408-8A, Q&A-1 of the proposed Income Tax Regulations ("proposed regulations") states that IRAs are subject to the distribution rules provided in Code section 401(a)(9) and section 1.401(a)(9)-1 of the proposed regulations for qualified plans.

Section 1.408-8, Q&A-4(b) of the regulations states, in relevant part, that in the case of an individual dying after December 31, 1983, the individual's surviving spouse may elect to treat the spouse's entire interest in the trust as the spouse's own account. If the surviving spouse makes such an election, the surviving spouse's interest in the account would then be subject to the distribution requirements of Code section 401(a)(9)(A) rather than those of Code section 401(a)(9)(B). An election to claim the IRA as the surviving spouse's own will be considered to have been made by the surviving spouse if any required amounts in the account (including any amounts that have been transferred into an IRA for the benefit of such surviving spouse) have not been distributed within the appropriate time period applicable to the decedent under Code section 401(a)(9)(B). The result of such an election is that the surviving spouse shall then be considered the individual for whose benefit the account is maintained.

Once the transfer from Taxpayer A's IRA to Taxpayer B's IRAs was completed, the transferred amounts became part of the account balance of Taxpayer B's IRAs, and must be considered in calculating Taxpayer B's minimum required distributions from his IRAs in the year following the year of transfer and thereafter. Once Taxpayer B is treated as the individual for whose benefit the IRAs are maintained, there is no longer any IRAs maintained for the benefit of Taxpayer A. Section 1.401(a)(9)-1 of the proposed regulations provides that the amount transferred from Taxpayer A's IRAs to Taxpayer B's IRAs does not affect any required minimum distribution from Taxpayer B's IRAs for 1997. Because Taxpayer B's account balance in the preceding calendar year (as of December 31, 1996) was $0.00, no distribution was required from Taxpayer B's IRAs in 1997. Thus, regarding ruling request four, Taxpayer B's required distribution date was December 31, 1998.

In addition, regarding ruling requests one and two, we conclude that each of the six beneficiaries are designated beneficiaries for purposes of section 401(a)(9) with respect to Taxpayer B's IRAs created by Taxpayer B and that each of these six beneficiaries of Taxpayer B's IRAs were timely selected prior to the earlier of Taxpayer B's death or his required beginning date (December 31, 1998) for purposes of determining required minimum distributions under section 401(a)(9).

Regarding ruling request three, Revenue Ruling 78-406, 1978-2 C.B. 157, provides that the direct transfer of funds from one IRA trustee to another IRA trustee does not result in such funds being paid or distributed to the participant, and it is not a rollover contribution. The revenue ruling states that this conclusion would apply whether the bank trustee initiates or the IRA participant directs the transfer of funds.

The mere segregation into subaccounts of the interest of multiple beneficiaries by the trustee/custodian of such IRA, at the request of the beneficiaries, does not effect the character or qualifications of the trustee or of Taxpayer B's IRAs. In addition, the act of segregation of multiple interests in an IRA does not render any beneficiary's interest in such IRA forfeitable or, in and of itself, subject the beneficiaries to any tax consequences. Accordingly, regarding ruling request three, we conclude that the creation of six separate accounts of Taxpayer B's IRA for the benefit of Taxpayer C and the other five beneficiaries will not result in income tax to Taxpayer C with respect to the amount transferred under Code sections 408(a) and 408(d) or result in any excise tax penalties with respect to Taxpayer C.

Regarding ruling request five, proposed regulation 1.401(a)(9)-1, Q&A H-2(b) states, in relevant part, that if, as of an employee's required beginning date, or in the case of distributions under Code section 401(a)(9)(B)(iii) as of the employee's date of death, the beneficiaries with respect to a separate account differ from the beneficiaries with respect to the other separate account (or segregated share), an account need not be aggregated with other separate accounts (or segregated shares) in order to determine whether the distributions from such separate account (or

segregated share) satisfy Code section 401(a)(9). Instead, the rules in Code section 401(a)(9) may separately apply to such separate account (or segregated share).

Code sections 401(a)(9)(B)(ii) and (iii) set forth, respectively, the 5-year rule and the exception to it for the distribution of the interest of any employee who dies before distributions have begun in accordance with subparagraph (A)(ii). Section 401(a)(9)(B)(iii) provides that if (I) any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary, (II) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and (III) such distributions begin not later than one year after the date of the employee's death or such later date as the Secretary may by regulations prescribe, for purposes of clause (ii), the portion referred to in subclause (I) shall be treated as distributed on the date on which such distributions begin.

Proposed regulation 1.401(a)(9)-1, Q&A C-3(a) provides as to a non-spouse beneficiary that in order to satisfy the rule in Code section 401(a)(B)(iii) (the exception to the five-year rule for non-spouse beneficiaries), distributions must commence on or before December 31 of the calendar year immediately following the calendar year in which the employee died. Proposed regulation 1.401(a)(9)-1, Q&A C-4(c) provides that non-spouse beneficiaries may elect on an individual basis whether the five-year rule in Code section 401(a)(9)(B)(ii) or the exception to the five-year rule in Code section 401(a)(9)(B)(iii) applies to distributions. Such election by a non-spouse beneficiary must be made no later than December 31 of the calendar year following the IRA owner's death in order to satisfy the requirements for the exception to the five-year rule. Therefore, with regard to ruling request five, we conclude that Taxpayer C may elect a life expectancy distribution method with respect to the Taxpayer B's IRAs held for her benefit by no later than December 31, 1999, provided minimum distributions commence by that date.

Regarding ruling requests six and seven, proposed regulation 1.401(a)(9)-1, Q&A E-2(a) provides that in the

case of any distribution under Code section 401(a)(9)(B)(iii), the life expectancy of any designated beneficiary is calculated based on the beneficiary's attained age as of the beneficiary's birthday in the calendar year in which distributions are required to commence to such beneficiary in order to satisfy Code section 401(a)(9)(B)(iii).

Section 1.401(a)(9)-1, Q&A F-1(a) states that for benefits in the form of an individual account to be distributed over a period not extending beyond the life expectancy of the designated beneficiary (as described in Code section 401(a)(9)(B)(iii)), the amount required to be distributed for each calendar year, beginning with the first calendar year for which distributions are required and then for each succeeding calendar year, must at least equal the quotient obtained by dividing the employee's benefit by the applicable life expectancy. The minimum amount is always determined under this regulation and not Code section 401(a)(9)(A)(i). Section 1.401(a)(9)-1, Q&A F-5(a), in general, states in the case of an individual account, the benefit used in determining the minimum distribution for a distribution calendar year is the account balance as of the last valuation date in the calendar immediately preceding any distribution calendar year (valuation calendar year). Therefore, we conclude that in determining the amount of the required minimum distributions under the life expectancy method, Taxpayer C shall use her allocated one/sixth (1/6) share of the value of Taxpayer B's IRAs as of December 31, 1998, and divide that amount by her life expectancy under the IRS single life expectancy table based upon said beneficiary's age in the calendar year 1999; and, that she may receive said payout under the life expectancy method as long as the IRAs are maintained in the name of Taxpayer B, deceased IRA owner, and she makes the appropriate life expectancy election by no later than December 31, 1999.

Notice 88-38, 1988-1 C.B. 524, provides individuals with an alternative method for satisfying the requirements for minimum distributions from IRA's. Under this method, individuals must still calculate the required minimum distribution separately for each IRA. However, such amounts may then be totalled and the total distribution taken from any one or more of the individual IRAs. Thus, the alternative method would allow an individual to satisfy the

minimum distribution requirement by taking from one IRA the amount required to satisfy the minimum distribution requirement for other IRAs. Thus, although the amount of Taxpayer C's minimum distribution is based on the value of her 1/6 interest in each IRA as of December 31, 1998, Taxpayer C may take the minimum distribution from one or more IRAs in which she has an interest.

As indicated above, a non-spouse beneficiary is deemed to elect the exception to the five-year rule of code section 401(a)(9)(B)(ii) if he/she begins taking distributions over her life expectancy beginning not later than December 31 of the calendar year immediately following the year in which the employee died.

Regarding ruling requests eight, nine, and ten, proposed regulation 1.401(a)(9)-1, Q&A E-3&4 provides that life expectancies for purposes of determining required distributions under Code section 401(a)(9) must be computed by use of the expected return multiples in Tables V and VI of section 1.72-9 of the regulations. Under section 1.72-9 Table V of the regulations, the remaining life expectancy of someone who is 61 years old is 23.3 years. In accordance with the above regulations, we conclude with respect to ruling requests eight, nine, and ten: 1) that Taxpayer C who is age 61 in the calendar year 1999 may use a life expectancy based upon her single life expectancy determined in the calendar year 1999 under regulation section 1.72-9 Table V in determining her required minimum distributions from her one-sixth (1/6) interest in the IRAs; 2) that under the life expectancy method, Taxpayer C would determine her required minimum distribution for the calendar year 1999 from accounts in the IRAs based upon the value as of December 31, 1998, by dividing the account balances by her single life expectancy determined in the calendar year 1999 under regulation section 1.72-9, Table V; and 3) that Taxpayer C will be deemed to have elected the life expectancy method with respect to her interest in Taxpayer B's IRAs if she calculates her required minimum distributions from Taxpayer B's IRAs held for her benefit as of December 31, 1998, by dividing the IRA account balances as of December 31, 1998, by her single life expectancy determined in the calendar year 1999 under regulation 1.72-9, Table V, provided that she receives the appropriate amounts from one or more of the IRAs by December 31, 1999.

These rulings are based on the assumption that Taxpayer B's IRAs meet the requirements Code section 408.

A copy of this letter has been sent to your authorized representative in accordance with the power of attorney on file in this office.

Sincerely yours,

(Signed) John Swieca

John Swieca,
Chief, Employee Plans
Technical Branch 1

Enclosures:
Deleted copy of letter
Notice of Intention to Disclose