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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:T4

Date: SEP - 9 1999

Legend:

Individual A: =

Individual B: =

Individual C: =

Individual D: =

Individual E: =

Individual F: =

IRA 1: =

IRA 2: =

IRA 3: =

IRA 4: =

IRA 5: =

IRA 6: =

This is in response to your December 11, 1998, as supplemented by letters dated June 16, 1999, and July 12, 1999 request for a private letter ruling concerning the tax treatment of certain transactions relating to Individual A and Individual B's individual retirement arrangements (IRAs). The following facts and representations have been submitted in support of your ruling request.

Individual A established an IRA, IRA 1. Pursuant to a beneficiary designation timely signed, Individual B, the lawful spouse of Individual A, was the sole beneficiary of IRA 1. Prior to Individual A's death, Individual B established IRA 2. It is represented that the IRAs established by Individual A and Individual B were, at all times, in compliance with section 408(a) of the Internal Revenue Code.

Individual A reached age 70½ in 1994, and began receiving distributions from IRA 1 in compliance with the minimum required distribution provisions of Code sections 408(a)(6) and 401(a)(9), in 1995. As the owner of IRA 2, and also being over the age of 70½, Individual B began receiving the required minimum distributions with respect to IRA 2 in 1997.

Individual A died in 1997. As sole beneficiary, Individual B received the required minimum distribution from IRA 1 for 1998. Subsequently, Individual B, by means of a trustee-to-trustee transfer, transferred the assets of IRA 1 to her own IRA, IRA 2. Your authorized representative has represented on your behalf that the assets transferred from IRA 1 to IRA 2 were not commingled with the assets already in IRA 2 and were subject to separate accounting.

Subsequently, Individual B transferred, by means of trustee-to-trustee transfers, the assets transferred from IRA 1 to IRA 2, which were segregated from the assets in IRA 2 prior to the transfer, into four new IRAs, IRAs 3 through 6. Individuals C, D, E, and F were named the beneficiaries of IRAs 3 through 6. The assets transferred from IRA 2 to IRAs 3 through 6 did not include any assets that were in IRA 2 prior to the transfer of IRA 1 into IRA 2. Individual B will begin to receive required minimum distributions from IRAs 3 through 6 no later than December 31, 1999.

Based on the foregoing, you request the following rulings:

1. That Individual B may elect to treat IRA 1 as her own, notwithstanding the fact that, at the death of her husband, both Individual A and Individual B had passed the required beginning date for determining the required minimum distribution ("RMD") under Code section 408(a)(6) of the Internal Revenue Code of 1986, as amended (the "Code") and that Individual B's transfer of the funds from Individual A's IRA to her own IRA constitutes a sufficient election to treat Individual A's IRA as her own.

2. That the transactions referenced above, whereby Individual B transferred, by means of trustee-to-trustee transfers, the portion of IRA 2 which consisted of the amounts transferred from IRA 1, into IRAs 3 through 6 do not constitute rollovers subject to the one rollover per year limitation found in Code section 408(d)(3)(B).

3. That, for purposes of Code section 408(a)(6), and the Income Tax Regulations promulgated thereunder, Individual B's required beginning date for IRAs 3 through 6 will be December 31, 1999, and that Individuals C, D, E, and F will be treated as designated beneficiaries pursuant to section 408(a)(6) of the Code for computation of the RMD to Individual B if they are properly so designated on or before December 31, 1999.

4. That with respect to IRAs 3 through 6, Individual B may elect whether or not to recalculate her life expectancy under section 401(a)(9)(D) of the Code and section 1.401(a)(9)-1 Q&A E-7(a) and (c) of the Regulations before her required beginning date of December 31, 1999.

5. That no excise tax under section 4974 of the Code will be imposed for calendar years after 1998, so long as amounts actually distributed from Individual B's four IRAs, IRAs 3 through 6, are greater than or equal to the minimum amounts required to be distributed to Individual B under section 408(a)(6) of the Code.

6. That no excise tax under section 4974 of the Code will be imposed for a failure to make distributions from Individual B's four IRAs, IRAs 3 through 6, for any calendar year prior to 1999.

With respect to your ruling request, 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 provides 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 trust is maintained.

Section 408(d)(3) of the Code sets forth the requirements for a tax-free rollover of amounts distributed from an IRA. Section 408(d)(3)(B) limits such rollovers for an individual to no more than once a year.

Sections 401(a)(9)(A)(i) and (ii) and 401(a)(9)(C) of the Code provide that the entire interest of each employee under a plan to which the required minimum distribution rules apply must be distributed no later than April 1 of the calendar year following the calendar year in which the individual attains age 70½ (the required beginning date) or, in general, must be distributed beginning not later than the required beginning date in accordance with regulations over the life of the employee or over the lives of the 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)(B) of the Code provides, in part, that if distributions have begun and the employee dies before the entire interest has been distributed to him, then the remaining portion of such interest shall be distributed at least as rapidly as under the method of distribution being used as of the date of his death.

Section 1.408-8, Q&A A-4(b) of the Proposed Income Tax 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. The result of such an election is that the surviving spouse shall then be considered the individual for whose benefit the trust is maintained. 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 section 401(a)(9)(A) of the Code rather than those of 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 section 401(a)(9)(B).

Q&A A-4 lists actions by which a surviving spouse can make said election. However, Q&A A-4 does not provide the exclusive methods by which a surviving spouse may so elect.

There is no requirement that the surviving spouse not have reached the required beginning date in order for such individual to claim an IRA as his or her own. Accordingly, with respect to ruling request number one, we conclude that, for purposes of Code section 408(a)(6), Individual B may lawfully claim IRA 1 as her own, notwithstanding the fact that at the death of Individual A, both Individual A and Individual B had passed the required beginning date. Furthermore, we conclude that the transfer of Individual A's IRA to Individual B's IRA constitutes a sufficient election to treat Individual A's IRA as Individual B's.

With respect to ruling request number two, we rule that the trustee-to-trustee transfer of Individual A's IRA to Individual B's IRA at the direction of Individual B constitutes an election to treat such transferred portion as Taxpayer's own and therefore qualifies as a tax-free transfer pursuant to section 408(d)(3)(A) and is not subject to the limitation found in Code section 408(d)(3)(B).

With respect to ruling request three, section 1.401(a)(9)-1, Q&A D-3(a) of the Proposed Regulations states, in part, that, generally, for purposes of calculating the distribution period

described in section 401(a)(9)(A)(ii) of the Code (for distributions before death), the designated beneficiary will be determined as of the employee's required beginning date.

Section 1.401(a)(9)-1, Q&As F-1(b) and (c) of the Proposed Regulations state, in part, that the distribution required to be made on or before the employee's required beginning date shall be treated as the distribution required for the employee's first distribution calendar year. A calendar year for which a minimum distribution is required is a distribution calendar year. The first calendar year for which a distribution is required is an employee's first distribution calendar year. The distribution required for distribution calendar years (other than a distribution required to be made on or before the employee's required beginning date) must be made on or before December 31 of that distribution calendar year.

Section 1.408-8, Q&A A-7 of the Proposed Regulations provides, in part, that in the case of a transfer from one IRA to another IRA, the rules of section 1.401(a)(9)-1, Q&A G-4 of the Proposed Regulations apply for purposes of determining the account balance of, and the minimum distribution, from the IRAs involved.

Section 1.401(a)(9)-1, Q&A G-4 provides, in part, that in the case of a transfer of an amount of an employee's benefit from one plan to another, the general rule is that the benefit of the employee under the transferee plan is increased by the amount transferred. The transfer has no impact on the minimum distribution required to be made by the transferee plan in the calendar year in which the transfer is received. However, if a minimum distribution is required from the transferee plan for the following calendar year, the transferred amount must be considered to be part of the employee's benefit under the transferee plan.

With respect to your third ruling request, in general, a surviving spouse who rolls over or transfers a distribution received from the IRA of her deceased husband into her own IRA is treated as having an account balance for purposes of Code section 401(a)(9) and the required distribution rules as of the last date of the calendar year during which the rollover or transfer is accomplished. Thus, required distributions from said rollover IRA must commence no later than the end of the calendar year immediately following the calendar year of rollover or transfer.

In this case, Individual B accomplished her transfers during the 1998 calendar year. Thus, she will have an account balance for purposes of the required distribution rules as of December 31, 1998. In accordance with the rule given above, Individual B must begin to receive required distributions from her rollover IRA no later than December 31, 1999. Furthermore, if Individual B intends to receive required distributions over the joint life expectancy of a designated beneficiary and herself, she must designate her beneficiary no later than December 31, 1999.

The entire balance credited to Individual A's IRA, IRA 1, was transferred in 1998 to Individual B's IRA, IRA 2, and subsequently to IRAs 3 through 6, in late 1998. At the same time, an election was made by Individual B to treat IRA 1 as her own account . Accordingly, for purposes of section 408(a)(6) of the Code and the Income Tax Regulations thereunder, Individual B's required beginning date for IRAs 3 through 6 will be December 31, 1999.

While the Proposed Regulations do not specifically answer the second part of ruling request three, in the absence of final regulations, issues may be resolved by a reasonable interpretation of the Proposed Regulations and statutory provisions. Accordingly, it is a reasonable interpretation of the minimum distribution requirements, with respect to ruling requests three, that Individuals C, D, E, and F may be treated as designated beneficiaries of

IRAs 3 through 6, respectively, for purposes of section 408(a)(6) of the Code, since Individual B will have designated the beneficiaries before her first required distribution date of December 31, 1999.

With respect to ruling request four, section 401(a)(9)(D) of the Code states that, for purposes of section 401(a)(9), the life expectancy of an employee and the employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.

Section 1.401(a)(9)-1, Q&A E-7(a) of the Proposed Regulations states, in part, that, if the plan does not adopt an optional provision specifying whether life expectancies will be determined with or without regard to the permissive recalculation rule of section 401(a)(9)(D) of the Code, and the employee or spouse has not made an election pursuant to Q&A E-7(c), the life expectancy of the employee or spouse (or the joint life and last survivor expectancy of the employee and spouse) must be recalculated annually as provided in section 401(a)(9)(D) for purposes of determining all distributions required under section 401(a)(9).

Section1.401(a)(9)-1, Q&A E-7 of the Proposed Regulations states that the plan may adopt a provision that permits the employee (or spouse, in the case of distributions described in section 401(a)(9)(B)(iii) and (iv) of the Code) to elect the applicability or inapplicability of section 401(a)(9)(D). If such election is permitted, the employee (or spouse) must elect whether or not life expectancy will be recalculated no later than the time of the first required distribution under section 401(a)(9).

Accordingly, with respect to ruling request four, you may elect whether or not to recalculate your life expectancy under section 401(a)(9)(D) of the Code and section 1.401(a)(9)-1, Q&A E-7(a) and (c) of the Proposed Regulations, before your required beginning date of December 31, 1999, as long as said election(s) are permitted under IRAs 3, 4, 5, and 6.

With respect to ruling request five, section 4974 states, in part, that if the amount distributed during the taxable year of the payee under any qualified retirement plan, including an IRA, as defined in Code section 408, is less than the minimum required distribution for such taxable year, there is hereby imposed a tax equal to 50 percent of the amount by which such minimum distribution exceeds the actual amount distributed during the taxable year.

Therefore, regarding ruling request five, because Invididual B has assumed Individual A's IRAs as her own, and Individual B is considered the individual for whose benefit the IRAs are maintained, Individual B's required minimum distribution will be determined by the distribution provisions of section 401(a)(9)(A) of the Code, over Individual B's life or over the lives of Individual B and a designated beneficiary (or over a period not extending beyond the life expectancy of Individual B or the life expectancy of Individual B and a designated beneficiary). We therefore conclude, with respect to ruling request five, that no excise tax under section 4974 will be imposed for calendar years after 1998, so long as amounts actually distributed from IRA's 3 through 6 are greater than or equal to the minimum amounts required to be distributed to Individual B under section 408(a)(6).

We further conclude, with respect to ruling request six, that no excise tax under section 4974 will be imposed for failure to make distributions from IRAs 3 through 6 for any calendar year prior to 1999.

This ruling is based on the assumption that all IRAs meet the requirements of section 408 of the Code at all times.

The original letter and a copy of this letter have been sent to your authorized representative in accordance with a power of attorney on file in this office.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited by others as precedent.

Sincerely yours, John G. Riddle, Jr., Chief, Employee Plans, Technical Branch 4

John G. Riddle, Jr.