199951053

Internal Revenue Service

Index Nos: 401.06-00
401.06-02

Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply to:
OP:E:EP:T:3

Date:

OCT 1 1999

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Taxpayer D:

Taxpayer E:

Date 1:

Date 2:

Date 3:

IRA X:

Dear :

This is in response to the , request for letter ruling submitted on your behalf by your authorized representative in which a letter ruling under section 401(a)(9) of the Internal Revenue Code is requested. The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 1, died during 1998. At her death, Taxpayer A owned IRA X which consisted of assets of an individual retirement arrangement (IRA) maintained by Taxpayer E, Taxpayer A's husband, at his death on Date 2, 1996, which was converted into IRA X on Date 3, 1996 which date was approximately four months after Date 2.

On Date 3, 1996, Taxpayer A named Taxpayers B, C, and D, her three sons, as the beneficiaries of her IRA X. Taxpayer B is the oldest of Taxpayer A's three sons.

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Taxpayer A has been receiving distributions from her IRA X based on her single life expectancy recalculated annually. Taxpayers B, C and D wish to receive distributions of the amount remaining in IRA X beginning in 1999 over the life expectancy of Taxpayer B, the oldest of Taxpayer A's three sons and the oldest named beneficiary of IRA X.

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

> That for calendar years after 1998, the year of Taxpayer A's death, distributions from Taxpayer A's IRA X may be made over the life expectancy of Taxpayer B, Taxpayer A's oldest son and the oldest of her three named IRA X beneficiaries notwithstanding that, during Taxpayer A's lifetime, distributions from IRA X to her were made over her recalculated life expectancy.

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

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.

Section 401(a)(9)(C) of the Code 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 (IRA holder) attains age 70 1/2.

Code section 401(a)(9)(B)(i) provides that where distributions have begun over life expectancy(cies) in accordance with subparagraph (A)(ii), a trust shall not constitute a qualified trust under this section unless the plan provides that if the employee dies before his entire interest has been distributed to him, the remaining portion of such interest will be distributed at least as rapidly as under the method of distribution being used under subparagraph (A)(ii) as of the date of death,

Section 1.401(a)(9)-1 of the proposed regulations, Q&A D-3, provides that for purposes of calculating the distribution period for distributions that begin prior to death, the designated beneficiary will be determined as of the plan participant's (IRA holder's) required beginning date.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A F-1(a), provides that where an employee's benefit is in the form of an individual account and is to be distributed over a period not extending beyond the life expectancy of the employee or the joint and last survivor expectancy of the employee and his designated beneficiary, the amount required to be distributed for each calendar year, beginning with the first calendar year for which distributions are required and for each succeeding calendar year, must be at least equal to the quotient obtained by dividing the employee's benefit by the applicable life expectancy.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A F-1(d), provides that the term "applicable life expectancy" means the life expectancy (or the joint life and last survivor expectancy) determined in accordance with E-1 through E-5 of the proposed regulations, reduced by one for each calendar year which has elapsed since the date on which the life expectancy was calculated. However, pursuant to E-6 through E-8 of the proposed regulations, if the life expectancy is recalculated, the applicable life expectancy will be the expectancy so recalculated.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A F-3A, provides, generally, that, with respect to individual account plans from which distributions have commenced prior to the employee's death, post death distributions will comply with the "at least as rapidly as under the method of distribution being used under section 401(a)(9)(A)(ii) rule" if said distributions are made in accordance with Q&A F-1.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A E-5(a)(1), provides, in relevant part, that, except as

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otherwise provided in paragraph (f), 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.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A E-8 provides, in pertinent part, that the life expectancy of a non-spouse beneficiary may not be recalculated. Q&A E-8 also provides, in pertinent part, that if the life expectancy of either a plan participant (IRA holder) or his beneficiary is being recalculated, the recalculated life expectancy is reduced to "0" at the end of the calendar year following the calendar year of the IRA holder's or beneficiary's death.

In this case, Taxpayer A elected to treat her husband's, Taxpayer E's, IRA as her own in 1996, the same calendar year in which he died. Furthermore, on the same date on which she elected to treat her husband's IRA as her own, she named her three sons as the beneficiaries of her IRA X. Thus, for purposes of Code section 401(a)(9), Taxpayer A will be treated as having timely designated Taxpayer B, her oldest son, as the beneficiary of her IRA X.

The issue presented in this case is whether post death distributions from Taxpayer A's IRA X may be made over Taxpayer B's life expectancy although distributions from IRA X during Taxpayer A's life were made over Taxpayer A's single recalculated life expectancy (and not over Taxpayer A's and Taxpayer B's joint life expectancy) without violating the "at least as rapidly" rule of Code section 401(a)(9)(B)(i) as described in section 1.401(a)(9)-1 of the proposed regulations, Q&A F-3A.

In this case, as noted above, Taxpayer A timely designated Taxpayer B as her beneficiary for purposes of Code section 401(a)(9). Thus, Taxpayer A could have received distributions over her and Taxpayer B's joint life expectancy during her lifetime. Such distributions would have complied with the minimum required distribution rules. Instead, Taxpayer A chose to receive distributions over her single life expectancy recalculated. In effect, Taxpayer A received distributions in amounts greater than the required minimums, or, in other words, chose to accelerate receipt of her lifetime distributions.

Taxpayer A's election to accelerate distributions does not affect the determination, above, that Taxpayer A's

timely designating Taxpayer B as her beneficiary resulted in Code section 401(a)(9) required distributions being those computed using Taxpayer A's and Taxpayer B's joint and survivor life expectancy. Thus, although Taxpayer B's life expectancy was not used in computing lifetime distributions to Taxpayer A, it may be used to determine post-death required distributions to Taxpayer A's beneficiaries. In short, the "at least as rapidly rule" will not be violated if post-death distributions are calculated using the life expectancy of Taxpayer A's designated beneficiary, Taxpayer B, since Taxpayer A could have used Taxpayer B's life expectancy to determine the amount of her required lifetime distributions.

In this case, as noted above, Taxpayer A's life expectancy was being recalculated. Thus, as of the end of 1999, the calendar year following the calendar year of her death, her life expectancy for purposes of Code section 401(a)(9) will be reduced to "0". Therefore, required distributions to Taxpayer A's beneficiaries will be those computed using the life expectancy of Taxpayer B, her oldest and, therefore, designated beneficiary.

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

> That for calendar years after 1998, the year of Taxpayer A's death, distributions from Taxpayer A's IRA X may be made over the life expectancy of Taxpayer B, Taxpayer A's oldest son and the oldest of her three named IRA X beneficiaries, notwithstanding that, during Taxpayer A's lifetime, distributions from IRA X to her were made over her recalculated life expectancy.

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

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Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Chief, Employee Plans
Technical Branch 3

Enclosures:

Deleted copy of letter ruling
Form 437