TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201038019

JUN 28 2010

Uniform Issue List: 401.06-00

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SE:T:EP:RA:T2

Legend:

Taxpayer A	=	***
Taxpayer B	=	***
Taxpayer C	=	***
Decedent D	=	***
Revocable Trust T	=	***
Restated Trust R	=	*** *** ***
State A	=	***
IRA A	=	*** ***
IRA B	=	*** ***
Company N	=	***
Company L	=	***
Age A	=	***
Age B	=	***

Age C	=	***
Age D	=	***
Date 1	=	***
Date 2	=	***
Date 3	=	***
Date 4	=	***
Date 5	=	***
Date 6	=	***
Calendar Year 1	=	***
Calendar Year 2	=	***

Dear ***:

This is in response to your request dated June 3, 2009 and supplemented by your letter dated November 12, 2009, and by your letter dated March 29, 2010, in which you request rulings under sections 401(a)(9) and 408(d)(3) of the Internal Revenue Code (the "Code") regarding whether under section 408 of the Code Taxpayer A, as a beneficiary of Decedent D, may transfer, after Decedent D's death, her percentage interest in each of Decedent D's IRAs, to separate IRAs created solely for her, and whether Taxpayer A may receive distributions from her beneficiary IRAs without regard to the distribution decisions made by the other IRA beneficiaries (Taxpayers B and C).

The following facts and representations have been submitted under penalty of perjury in support of the rulings requested. Taxpayer A, Age A, Taxpayer B, Age B, and Taxpayer C, Age C (hereinafter "Taxpayers"), are the children of Decedent D, who died on Date 1, Calendar Year 1, at Age D. Decedent D was predeceased by his spouse and survived by his three children, the Taxpayers.

On Date 2, 1978, Decedent D executed a trust agreement, Revocable Trust T, with himself as trustee. Revocable Trust T was amended and restated on Date 3, 1992, and again amended and restated in its entirety on Date 4, 1999, as Restated Trust R. Restated Trust R has not been amended, revoked, or otherwise changed. Pursuant to its Section 2.1, Restated Trust R was revocable by Decedent D during his lifetime, and thus became irrevocable upon his death on Date 1. The Taxpayers are currently the

Trustees of Restated Trust R pursuant to Section 6.1 of Restated Trust R. Restated Trust R is described as being valid under the laws of State A, the state in which Decedent D resided on his death.

As of his death on Date 1, Calendar Year 1, Decedent D was the owner of IRA A, maintained by Company N, and IRA B, maintained by Company L. On Date 5, 2003, Restated Trust R was named the beneficiary of IRA B through a beneficiary designation. On Date 6, 2004, Restated Trust R was named the beneficiary of IRA A through a beneficiary designation. Both Company A and Company B were provided with a copy of Restated Trust R and a list of its beneficiaries prior to October 31, Calendar Year 2.

Pursuant to Section 3.3, Taxpayers are co-equal beneficiaries of Decedent D's residual estate of Restated Trust R, which would include the assets in IRAs A and B. Restated Trust R does not contain any conditions limiting the payment of the assets of IRAs A and B that are held in Restated Trust R to the Taxpayers.

Taxpayers, in their capacity as co-trustees of Restated Trust R propose to divide both IRA A and IRA B, by means of trustee-to-trustee transfers, into six (6) separate IRAs, with Taxpayer A, Taxpayer B, and Taxpayer C each having two (2) IRAs for either his or her benefit. Six "Transitional" IRAs will be set up, by means of trustee-to-trustee transfers, in the name of Decedent D. Each of the six will be for the benefit of one of the three named Taxpayers as a beneficiary of Restated Trust R. Subsequently, by means of trustee-to-trustee transfers, six (6) "Final" IRAs will be set up. Each of the "Final" six (6) transferee IRAs will be maintained in the name of Decedent D for one of the three above-referenced Taxpayers without reference to Restated Trust R. For instance, it is proposed that one transferee IRA will be maintained by Company A in the name of Decedent D for the benefit of Taxpayer A and another transferee IRA will be maintained by Company B in the name of Decedent D for the benefit of Taxpayer A. It is further proposed that distributions from each of the two (2) transferee IRAs set up to benefit Taxpayer A will be made over the life expectancy of Taxpayer A, the oldest of the three (3) Taxpayers. Taxpayer A asserts that other than a distribution made to Decedent D in Calendar Year 1, no funds in either IRA A or IRA B have been distributed.

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

1. The two (2) beneficiary IRAs (collectively referred to as "Beneficiary IRAs") created by means of trustee-to-trustee transfers which will be maintained in the name of Decedent D for the benefit of Taxpayer A will constitute inherited IRAs as such term is defined in section 408(d)(3)(C) of the Code.

2. The creation of the Beneficiary IRAs for the benefit of Taxpayer A, by means of trustee-to trustee transfers as provided in Revenue Ruling 78-406, shall not constitute taxable distributions or payments, as the terms are defined for purposes of

section 408(d)(1) of the Code to Taxpayer A nor will they be considered excess contributions to the IRAs set up to benefit Taxpayer A.

3. Regarding the Beneficiary IRAs, the IRA ultimately created by a trustee-to-trustee transfer of a portion of IRA A to the IRA to be established in Decedent D's name and maintained by Company A for the benefit of Taxpayer A, may be maintained separately from the IRA created by a trustee-to-trustee transfer of a portion of IRA B to the IRA to be established in Decedent D's name and maintained by Company B for the benefit of Taxpayer A.

4. The minimum distribution requirements under section 401(a)(9) of the Code concerning the Beneficiary IRAs created by trustee-to-trustee transfers for the benefit of Taxpayer A may be met by distributing amounts annually from each distinct Beneficiary IRA created for Taxpayer A's benefit, computed using Taxpayer A's remaining life expectancy as the eldest of the sibling Taxpayers utilizing the Single Life Table 1 provided at Section 1.401(a)(9)-9 of the Final Income Tax Regulations, Question and Answer 1, beginning with Calendar Year 2 and each calendar year thereafter.

With respect to your first ruling request, section 408(d)(1) of the Code provides, generally, that in accordance with the rules of section 72 of the Code, amounts paid or distributed from an IRA are included in gross income by the payee or distributee. In addition, section 408(d)(3)(C)(ii) of the Code provides that an IRA will be considered an "inherited" IRA if the IRA is maintained by a person who acquired the IRA by reason of the death of another individual and was not the surviving spouse of such individual.

Pursuant to the facts represented herein, Taxpayer A, who was not Decedent D's spouse, will acquire her Beneficiary IRAs by virtue of the Decedent D's death. Accordingly, to the extent the Beneficiary IRAs are considered IRAs, they will constitute "inherited" IRAs within the meaning of such term under section 408(d)(3)(C) of the Code.

With respect to your second ruling request, section 408(d)(3)(C) of the Code provides that, in general, amounts from an "inherited" IRA cannot be rolled over into another IRA.

Revenue Ruling 78-406, 1978-2 C.B. 157 provides that the direct transfer of funds from one IRA trustee to another IRS 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 section 408(d) of the Code and does not constitute a rollover distribution.

Revenue Ruling 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. The beneficiary accomplishing such a post-death trustee-to-trustee transfer need not be the surviving spouse of a deceased IRA holder.

Thus, with respect to your second ruling request, the proposed trustee-to-trustee transfers to be used to establish the Beneficiary IRAs set up to benefit Taxpayer A will not, pursuant to the above-referenced Revenue Ruling 78-406, constitute taxable payments or distributions, within the meaning of section 408(d) of the Code, to Taxpayer A, and also will not constitute excess contributions to the Beneficiary IRAs set up to benefit Taxpayer A.

With respect to your third letter ruling request, two distinct Beneficiary IRAs will be set up to benefit Taxpayer A. Each IRA will hold assets transferred from a distinct IRA maintained by Decedent D at his death.

Nothing in the Code or Income Tax Regulations promulgated thereunder requires the two Beneficiary IRAs to be set up to benefit Taxpayer A be aggregated.

Accordingly, the Beneficiary IRA to be created by means of a trustee-to-trustee transfer of a portion of IRA A to an IRA established in Decedent D's name and maintained by Company A for the benefit of Taxpayer A may be maintained separately from the IRA to be established by means of a trustee-to-trustee transfer of a portion of IRA B to the IRA established in Decedent D's name and maintained by Company B for the benefit of Taxpayer A. This conclusion assumes that each Beneficiary IRA be established through a two-step process that will first consist of a "Transitional" IRA that will be established by the above-mentioned trustee-to-trustee transfer and will be titled in the following format, "Decedent D (deceased) for the benefit of Taxpayer A, as beneficiary of Restated Trust R." Second, each Beneficiary IRA will be established by means of an additional trustee-to-trustee transfer from each respective "Transitional" IRA, with each Beneficiary IRA being titled in the following format, "Decedent D (deceased) for the benefit of Taxpayer A."

With respect to your fourth 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) of the Code shall apply to the distribution of the entire interest of an individual for whose benefit an IRA trust is maintained.

Section 401(a)(9)(A) of the Code provides that a trust shall not constitute a qualified trust under the Code unless the plan provides that the entire interest of each employee/IRA holder will be distributed to such employee/IRA holder not later than the required beginning date, or will be distributed, beginning not later than the required beginning date, in accordance with Regulations, over the life of such employee/IRA holder or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee/IRA holder or the life expectancy of such employee/IRA holder and a designated beneficiary).

Section 401(a)(9)(B)(i) of the Code provides, in general, that if an employee/IRA holder dies after distribution of his interest has begun in accordance with section 401(a)(9)(A)(ii) (after his required beginning date), the remaining portion of his interest must be distributed at least as rapidly as under the method of distribution being used as of the date of his death.

Section 401(a)(9)(C) of the Code provides, in relevant part, that for purposes of section 401(a)(9), 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 and ½.

On April 17, 2002, Final Income Tax Regulations ("Regulations") were published in the Federal Register with respect to sections 401(a)(9) and 408(a)(6) of the Code. (See also, 2002-19 I.R.B. 852, May 13, 2002). Section 1.408-8 of the Regulations, Question and Answer 1(a) provides, in part, that IRAs are subject to the required minimum distribution rules under section 401(a)(9) of the Code and that in order to satisfy section 401(a)(9) of the Code for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2003, the rules of section 1.401(a)(9)-1 through 1.401(a)(9)-9 of the Regulations must be applied, except as otherwise provided.

Section 1.401(a)(9)-4 of the Regulations, Question and Answer 3, states that only individuals may be designated beneficiaries for purposes of section 401(a)(9) of the Code. A person that is not an individual, such as the employee's/IRA holder's estate, may not be a designated beneficiary.

Section 1.401(a)(9)-4 of the Regulations, Question and Answer 4(a), provides that in order to be a designated beneficiary, that beneficiary must be a beneficiary as of the date of the employee's/IRA holder's death. The designated beneficiary will generally 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.

Section 1.401(a)(9)-4 of the Regulations, Question and Answer 5(a) provides that a trust is not a designated beneficiary even if the trust is named as a beneficiary. Accordingly, Restated Trust R is not a designated beneficiary of Decedent D even though Restated Trust R was named by Decedent D as the beneficiary of IRAs A and B. Section 1.401(a)(9)-4 of the Regulations, Question and Answer 5(a) further provides that if the requirements of Question and Answer 5(b) are met, and the required documentation as described in Question and Answer 6(b) is provided to the plan administrator/IRA custodian by the trustee of such trust, the beneficiaries of the trust will be treated as having been designated as beneficiaries of the employee/IRA holder under the plan/IRA for purposes of determination the distribution period under section 401(a)(9) of the Code. The requirements of Section 1.401(a)(9)-4, Question and Answer 5(b) are:

(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/IRA holder.
(3) The beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's/IRA holder's benefit are identifiable within the meaning of the Regulations from the trust instrument.
(4) Such documentation has been provided to the plan administrator/IRA custodian.

Section 1.401(a)(9)-4, Question and Answer 6(b) of the Regulations provides, in part, that, at a minimum, documentation sufficient to enable a plan administrator/IRA custodian to identify beneficiaries of an IRA must be provided by a trustee to the IRA custodian by October 31 of the calendar year immediately following the calendar year in which the IRA holder died.

Taxpayer A has submitted documentation representing that (i) Restated Trust R was the named beneficiary of IRAs A and B, (ii) Restated Trust R is valid under the laws of State A, (iii) Restated Trust R became irrevocable upon Decedent D's death, (iv) the beneficiaries of Restated Trust R with respect to the trust's interest in IRAs A and B are identifiable in Restated Trust R and are, in fact, Taxpayers A, B and C, (v) copies of Restated Trust R were sent to Companies L and N prior to October 31, Calendar Year 2. Accordingly, Taxpayers A, B, and C are considered the potential designated beneficiaries of IRAs A and B.

With further respect to your fourth ruling request, section 1.401(a)(9)-5, Question and Answer 5(a) of the Regulations provides, in part, that if an employee/IRA holder dies on or after his required beginning date, the applicable distribution period for distribution calendar years after the distribution calendar year containing the employee's/IRA holder's date of death is either – (1) if the employee/IRA holder has a designated beneficiary as of the date determined under Section 1.401(a)(9)-4, Question and Answer 4, the longer of (i) the remaining life expectancy of the employee's/IRA holder's designated beneficiary determined in accordance with paragraphs (c)(1) or (c)(2) of Question and Answer 5, and (ii) the remaining life expectancy of the employee/IRA holder determined in accordance with paragraph (c)(3) of Question and Answer 5, or (2) if the employee/IRA holder has no designated beneficiary as of the date determined under Section 1.401(a)(9)-4, Question and Answer 4, the remaining life expectancy of the employee/IRA holder as determined under Section 1.401(a)(9)-5, Question and Answer 5(c)(3).

Section 1.401(a)(9)-5, Question and Answer 5(c)(1) of the Regulations provides, in general, that with respect to an employee/IRA holder who has a non-spouse designated 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/IRA holder's death. The applicable distribution is reduced by one for

each subsequent calendar year that has elapsed after the calendar year immediately following the calendar year of the employee's/IRA holder's death.

Section 1.401(a)(9)-5, Question and Answer 7 of the Regulations states, in general, that if more than one beneficiary is designated as a beneficiary by an employee/IRA holder as of the applicable date for determining the designated beneficiary under Section 1.401(a)(9)-4, Question and Answer 4 of the Regulations, the beneficiary with the shortest life expectancy will be the designated beneficiary for purposed of determining required distributions.

Section 1.401(a)(9)-8, Question and Answer 2(a) of the Regulations contains the "separate account" rules as applied to defined contribution plans. A "separate account" is an account under which the beneficiary or beneficiaries differ from the beneficiary or beneficiaries of other accounts. In general, if separate accounts are established, for years subsequent to the calendar year containing the date on which the separate accounts were established (or the date of death, if later), a separate account under a plan/IRA is not aggregated with the other separate accounts under the plan/IRA in order to determine whether the distributions from such separate account satisfy the requirements of section 401(a)(9) of the Code. Rather, the rules in section 401(a)(9) of the Code apply separately to each separate account under the plan/IRA.

Section 1.401(a)(9)-8, Question and Answer 3 of the Regulations provides that a separate account is a separate portion of an employee's/IRA holder's benefit reflecting the separate interest of the employee's/IRA holder's beneficiaries under the plan/IRA as of the date of the employee's/IRA holder's death for which separate accounting is maintained. The separate accounting must allocate all post-death investment gains and losses, contributions, and forfeitures, for the period prior to the establishment of the separate accounts, on a pro-rata basis in a consistent and reasonable manner among the separate accounts. Section 1.401(a)(9)-4, Question and Answer 5(c) of the Regulations provides, in relevant part, that the separate account rules are not available to beneficiaries of a trust with respect to the trust's interest in an employee's benefit.

The relevant Single Life Table for determining life expectancy is provided in Section 1.401(a)(9)-9, Question and Answer 1 of the Regulations.

Section 1.408-8 of the Regulations, Question and Answer 1(a) provides, in part, that IRAs are subject to the required minimum distribution rules under section 401(a)(9) of the Code.

As noted above, Taxpayers A, B, and C are the potential designated beneficiaries with respect to IRAs A and B. However, because Taxpayers A, B, and C are potential designated beneficiaries of IRAs A and B as a result of being identifiable beneficiaries of Restated Trust R's interest in both IRA A and IRA B, pursuant to section 1.401(a)(9)-4, Question and Answer 5(c), the separate accounting rules are inapplicable to distributions made from IRAs A and B. Thus, Taxpayer A, as the eldest of the three Taxpayers, is the "Designated Beneficiary," as that term is used with respect to the

required distribution rules of Code section 401(a)(9) as they apply to Decedent D's IRAs A and B.

With further respect to your fourth ruling request, as noted above, section 1.408-8 of the Regulations, Question and Answer 1(a) provides, in part, that IRAs are subject to the required minimum distribution rules under section 401(a)(9) of the Code. In addition, because the two Beneficiary IRAs set up to benefit Taxpayer A result from subdivision of Decedent D's IRAs A and B, the required minimum distribution rules pursuant to section 1.401(a)(9)-5, Question and Answer 7, will be applied to the Beneficiary IRAs by treating Taxpayer A as the designated beneficiary of each Beneficiary IRA. Accordingly, the minimum distribution requirements under section 401(a)(9) of the Code may be met with respect to each Beneficiary IRA by distributing amounts annually to Taxpayer A from each of her respective Beneficiary IRAs, computed using Taxpayer A's remaining life expectancy, since she is the beneficiary with the shortest remaining life expectancy of the three Taxpayers, and using Single Life Table 1 as provided in section 1.401(a)(9)-9 of the Regulations, Question and Answer 1, beginning with Calendar Year 2 and continuing each calendar year thereafter.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or Regulations, which may be applicable hereto.

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

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

If you wish to inquire about this ruling, please contact *** at ( ) ***-****. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,

Donzell H. Littlejohn, Manager,
Employee Plans Technical Group 2

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose

cc: ***
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