**Internal Revenue Service**

Department of the Treasury 200041042

Washington, DC 20224

Uniform Issue List: 401.06-00, 408.00-00

Person to Contact:

Telephone Number:

Refer Reply to: T:EP:RA:T3

Date: JUL 21 2000

Legend:

Grantor =

IRA X =

Custodian A =

Beneficiary E =

Beneficiary F =

Beneficiary G =

This is in response to your request for a private letter ruling dated March 16, 2000, submitted on your behalf by your authorized representative. In support of your request, your authorized representative has submitted the following facts and representations.

Grantor was born on May 31, 1923, and maintained IRA X with Custodian A. Grantor attained age 70 1/2 during the calendar year 1993 and his date of death was February 19, 1999. Grantor's required beginning date, with respect to the commencement of required minimum distributions under section 401(a)(9) of the Internal Revenue Code "Code", from IRA X was April 1, 1994. Your authorized representative asserts that Grantor received his required minimum distributions during his lifetime based upon a single life expectancy which was recalculated each year.

Grantor designated his three children, Beneficiary E, Beneficiary F and Beneficiary G as designated death beneficiaries of IRA X on August 30, 1993, each having an equal interest in IRA X. Beneficiary E, whose birthday is February 17, 1954, is older than either Beneficiary F or Beneficiary G. His single life expectancy was 43.5 in 1993, the calendar year Grantor attained age 70 ½. The remaining term-certain with respect to Beneficiary E as of the year 2000, the calendar year following the Grantor's death, was 36.5. Grantor received part of his 1999 minimum required distribution prior to his death on February 19, 1999, and Beneficiaries E, F, and G received the balance of Grantor's 1999 minimum required distribution.

Based on the above, you request the following letter rulings:

(1) That Beneficiaries E, F and G are designated beneficiaries for purposes of section 401(a)(9) of the Code with respect to IRA X.

(2) That Beneficiaries E, F and G were timely selected as designated beneficiaries of IRA X for purposes of section 401(a)(9) of the Code.

(3) That Grantor's use of the single recalculated life expectancy in determining his required minimum distributions during his lifetime does not preclude the use of the term certain life expectancy of the oldest desiqnated beneficiary in the calendar year after the death of Grantor.

(4) That in determining the required minimum distributions after the death of Grantor, that Beneficiary G may use the remaining term-certain life expectancy of Beneficiary E since he is the oldest non-spouse designated beneficiary commencing in the calendar year 2000 and reduced by one for each calendar year thereafter.

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 sections 401(a)(9)(C)(i) and (ii) of the Code, the term "required beginning date", as it applies to IRA's, means April 1 of the calendar year following the year in which the employee attains age 70 1/2.

Section 401(a)(9)(B)(i) of the Code provides that, where distributions have begun under subparagraph (A)(ii), a trust shall not constitute a qualified trust under this section unless the plan provides that if --

(I) the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), and

(II) 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 distributions being used under subparagraph (A)(ii) as of the date of his death.

Section 1.401(a)(9)-1 of the Proposed Income Tax Regulations ("Proposed Regulations"), Q&A-D-2(a)(1), provides, in pertinent part, that designated beneficiaries are only individuals who are designated as beneficiaries under the plan. In general, it provides that an individual may be designated as a beneficiary under the plan either by the terms of the plan or, if the plan provides, by an affirmative election by the employee (or the employee's surviving spouse) specifying the beneficiary. A beneficiary designated as such under the plan is an individual who is entitled to a portion of an employee's benefit, contingent on the employee's death or another specified event.

Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A-D-3(a), provides that for purposes of calculating the distribution period described in section 401(a)(9)(A)(ii) (for distributions before death), the designated beneficiary will be determined as of the employee's required beginning date. If, as of that date, there is no designated beneficiary under the plan to receive the employee's benefit upon the employee's death, the distribution period is limited to the employee's life (or a period not extending beyond the employee's life expectancy).

In the present case, since Beneficiaries E, F and G were named beneficiaries on August 30, 1993, a date before Grantor's required beginning date of April 1, 1994, Beneficiaries E, F and G were selected in a timely manner for purposes of calculating the distribution period described in section 401(a)(9)(A)(ii) of the Code.

Accordingly, with regard to ruling requests one and two, we conclude that Beneficiaries E, F and G are timely selected designated beneficiaries of IRA X for purposes of section 401(a)(9) of the Code.

Section 401(a)(9)(D) of the Code permits an employee and his spouse to recalculate their life expectancies annually. Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A-E-8(a), provides guidance on how an employee's life expectancy is recalculated and provides that upon the death of the employee, the recalculated life expectancy of the employee (or the employee's spouse) will be reduced to zero in the calendar year following the calendar year of death. In any calendar year in which the last applicable life expectancy is reduced to zero, the plan must distribute the employee's entire remaining interest prior to the last day of such year in order to satisfy section 401(a)(9).

Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A-E-8(b), provides guidance on calculating the applicable life expectancy when the employee's life expectancy is being recalculated and the life expectancy of his designated beneficiary is not recalculated. It provides in relevant part that if the designated beneficiary is not the employee's spouse and the life expectancy of the employee is being recalculated annually, the applicable life expectancy for determining the minimum distribution for each distribution calendar year will be determined by recalculating the employee's life expectancy but not recalculating the beneficiary's life expectancy. Such applicable life expectancy is the joint and last survivor expectancy using the employee's attained age as of the employee's birthday in the distribution calendar year and an adjusted age of the designated beneficiary. The adjusted age of the designated beneficiary is determined as follows: First, the beneficiary's applicable life expectancy is calculated based on the beneficiary's' attained age as of the beneficiary's birthday in the calendar year described in E-1, reduced by one for each calendar year which has elapsed since that calendar year. The age (rounded if necessary to the higher age) in Table V of section 1.72-9 is then located which corresponds to the designated beneficiary's applicable life expectancy. Such age is the adjusted age of the designated beneficiary. As provided in paragraph (a), upon the death of the employee, the life expectancy of the employee is reduced to zero in the calendar year following the calendar year of the employee's death. Thus, for determining the minimum distribution for such calendar year and subsequent calendar years, the applicable life expectancy is the applicable life expectancy of the designated beneficiary determined under this paragraph.

Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A-E-l(a), provides, generally, that for required distributions under section 401(a)(9)(A) of the Code, life expectancies are calculated using the employee's (and the designated beneficiary's) attained age as of the employee's birthday (and the designated beneficiary's birthday) in the calendar year in which the employee attains age 70 1/2.

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

Because Grantor's life expectancy was being recalculated, upon his death, in accordance with Q&A-E-8(a) of section 1.401(a)(9)-1 of the Proposed Regulations, his life expectancy was reduced to zero. Although his benefit was paid in the form of a single life expectancy, upon his death, his life expectancy was not the last applicable life expectancy because he timely designated his beneficiaries by his required beginning date in accordance with Q&A-D-3(a) of the Proposed Regulations. Therefore, pursuant to Q&A-E-8(b) of section 1.401(a)(9)-1 of the Proposed Regulations, for purposes of determining the minimum distribution in the calendar year after the death of Grantor, the applicable life expectancy is the life expectancy of the designated beneficiary as determined under that section.

Since more than one individual was designated as a beneficiary with respect to the Grantor as of April 1, 1994, pursuant to section 1.401(a)(9)-1 of the Proposed Regulations, Q&A-E-5(a)(1), the beneficiary who is the oldest and, correspondingly, who has the shortest life expectancy, will be the designated beneficiary for purposes of determining the distribution Period under IRA X.

Therefore, with regard to ruling request three we conclude that Grantor's use of the single recalculated life expectancy in determining the required minimum distributions during his lifetime does not preclude the use of the term-certain life expectancy of the oldest designated beneficiary in the calendar year after Grantor's death.

Beneficiary E had the shortest life expectancy of the three designated beneficiaries on Grantor's required beginning date, April 1, 1994. Therefore, he is the designated beneficiary whose life expectancy will be used when determining the minimum distribution period under IRA X for the calendar year commencing after the year of Grantor's death, and for all subsequent years thereafter.

Pursuant to Q&As E-l(a) and E-8(b) of the Proposed Regulations, Beneficiary E's applicable life expectancy is calculated based on his attained age as of his birthday in the calendar year in which Grantor attained age 70 1/2, reduced by one for each calendar year which has elapsed since that calendar year. His single life expectancy in 1993, the year that Grantor attained age 70 1/2, was 43.5. Therefore, as of the calendar year 2000, the remaining term-certain period with respect to Beneficiary E is 36.5 years.

Accordingly, with respect to ruling request four we conclude that in determining the required minimum distributions after Grantor's death, Beneficiary G may use the remaining term-certain life expectancy of Beneficiary E since he is the oldest non-spouse designated beneficiary commencing in the calendar year 2000 and reduced by one for each calendar year thereafter.

The above ruling is contingent upon the continuation of IRA X as one described under section 408 of the Code.

The original of this ruling is being sent to your authorized representative in accordance with a power of attorney on file in this office.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:
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Form 437

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