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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:4\PLR-157004-01

Date:

FEBRUARY 24, 2003

Re:

LEGEND:

Taxpayer =

Spouse =

Daughter =

Trust M =

Daughter's Trust =

Fund Q =

Bank S =

State V =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This is in response to the October 9, 2001, letter submitted by your authorized representative on your behalf, and subsequent correspondence, in which your representative requested a series of letter rulings. The following facts and representations support your ruling request.

Taxpayer and Taxpayer's spouse, Spouse, were residents of State V. Spouse died on Date 3 survived by Taxpayer and Daughter. Taxpayer was born on Date 1 and Daughter was born on Date 2. At the time of Spouse's death, Spouse was the owner of an individual retirement arrangement (IRA) described in section 408(a). Taxpayer was the designated beneficiary of Spouse's IRA.

After Spouse's death, Taxpayer rolled over a single sum distribution received from Spouse's IRA into an IRA set up and maintained in Taxpayer's name.

Taxpayer designated Trust M, a revocable trust previously created by Taxpayer, as the primary beneficiary of her rollover IRA, after her death. Taxpayer is the initial trustee of Trust M. It is represented that Trust M is valid under the laws of State V and that a copy of Trust M has been given to the trustee of Taxpayer's rollover IRA.

Article III, Section (1) of Trust M provides that Taxpayer may at any time, in writing, revoke, amend or restate Trust M.

Article III, Section (2) provides the Taxpayer reserves the right to use or direct the payment of any part or all of the net income and corpus of the trust, and subject to Taxpayer's direction, net income shall be paid to the Taxpayer at least quarterly.

Article III, Section (3) provides that while Taxpayer is acting as trustee, Taxpayer has the right to deal with the trust corpus for Taxpayer's own benefit or for the benefit of any other person in any manner of Taxpayer's choosing, notwithstanding any provisions of Trust M, or any rule of law or statute now in existence or later enacted, limiting powers which may properly be exercised by a fiduciary.

Article IV, Section (3)(a) provides that, unless Taxpayer's will provides otherwise, the trustee is to provide sufficient assets for the payment of all taxes imposed by reason of Taxpayer's death, upon any transfer of property includible for the purpose of such taxes.

Article IV, Section (4) provides that upon Taxpayer's death, the entire remaining corpus of Trust M is to be held in trust for the benefit of Taxpayer's daughter, Daughter (Daughter's Trust.)

Article V provides for the administration of Daughter's Trust. Article V, Section (1)(a) provides that the trustee of the trust is directed to pay from the income (and corpus, if necessary) the premiums on major medical coverage to be obtained and maintained for the benefit of Daughter. Under Article V, Section (1)(b), the balance of the net income not so expended pursuant to Section (1)(a) is to be paid to Daughter, in quarter-annual installments.

Under Article V, Section (2)(a), the trustee of Daughter's Trust may apply corpus of Daughter's Trust to purchase and retain in the trust, a primary residence for Daughter's use. Section (2)(b) provides that the trustee may also pay to Daughter, or expend on her behalf, so much of the corpus of the trust, determined in the sole discretion of the trustee, as the trustee deems necessary or desirable in order to provide for the basic necessities required for the support and care of Daughter, to meet extraordinary requirements occasioned by illness or other misfortune, and to pay expenses of last illness and burial. In exercising this discretion, the trustee is to consider all other resources available to Daughter, including her earnings or potential earnings, and if she is a married woman not working, the earnings or potential earnings of her spouse. The trust provides that, it is Taxpayer's intention that any such distribution be made only when other assets available to Daughter have been exhausted or, in the discretion of trustee, when invasion of those assets is impractical or inadvisable.

Article V, Section (2)(c) provides that, upon the death of Daughter, the corpus then comprising Daughter's Trust, or any part thereof not effectively distributed, if any, is to be divided into equal sub-portions by allocation, per stirpes, among the surviving issue of Daughter (whom such issue represent), Daughter being the stock. To facilitate identification, the trustee is to designate each sub-portion with the name of the beneficiary for whom it was set aside. Each sub-portion is to constitute a Separate Trust to held and distributed under Article VI.

Under Article VI, the trusts established for the benefit of Daughter's surviving issue provide for payments of income and principal to the issue of Daughter. Upon the death of any surviving issue of Daughter, any corpus remaining in the issue's trust is to pass pursuant to the exercise by the deceased issue of a special power of appointment. In default of exercise, the remaining corpus is payable to the then surviving issue of the deceased issue of Daughter, per stirpes, subject to the provisions of Article VII, Section 6; otherwise to the beneficiary's parent's then living issue, per stirpes.

Article VII provides that if Daughter dies without issue, the remaining corpus of Daughter's Trust is to be distributed, outright and free of trust, to Fund Q.

As noted above, Taxpayer was born on Date 1 and has attained her required beginning date as that term is defined in section 401(a)(9)(C) of the Internal Revenue Code. Taxpayer has been receiving minimum distributions intended to comply with the requirements of section 401(a)(9) from her rollover IRA over her single life expectancy for calendar years up to, and including, calendar year 2001.

Taxpayer intends to establish an IRA with Bank S, situated in State V, pursuant to the Bank S Individual Retirement Trust Agreement (hereinafter IRA X) and related Adoption Agreement. IRA X is intended to function as both an IRA described in section 408(a), and a revocable trust under applicable state law. Bank S will act as trustee of IRA X. The Internal Revenue Service has issued an opinion letter to Bank S that IRA X complies with the requirements of section 408(a).

Taxpayer intends to fund IRA X by means of a trustee to trustee transfer of amounts currently held in her rollover IRA. Trust M will be the primary beneficiary of IRA X after Taxpayer's death.

Under Article XIV(D) of the IRA X governing instrument and Section 1 of the Adoption Agreement, Taxpayer retains full power over trust assets and the power to revoke IRA X at any time. The document also grants to Bank S as trustee, various trust powers particularly in the case in which Taxpayer is incapacitated.

Article IV of IRA X provides that distributions therefrom will comply with the requirements of section 401(a)(9).

Article VI(A) of IRA X provides that during the life of Taxpayer, all assets of IRA X shall be held and distributed for the exclusive benefit of Taxpayer. Taxpayer may demand distribution of all or any part of the assets of IRA X at any time, and the trustee is to make distributions in accordance with any such demand. Taxpayer is to direct the trustee in writing as to any distribution from IRA X and the amount and form of each distribution. Written direction must be delivered to the trustee at least 15 days prior to the date of distribution. Distributions are to be made only to Taxpayer or to such person designated in writing by Taxpayer to receive the distribution.

Article VI(B) provides that in the event of Taxpayer's incapacity, distributions are to be made for the benefit of Taxpayer and those dependent upon Taxpayer for health, education, maintenance, and support as determined by Trustee in Trustee's discretion.

Under Article VI (C), after the death of Taxpayer, distribution is to be made to each beneficiary in accordance with each beneficiary's interest, as specified in the Beneficiary Designation. Unless otherwise provided in any amendment, addenda or supplement to the IRA X governing instrument executed pursuant to Article XXII, each beneficiary is to have the power to demand distribution of all or any part of the assets held in IRA X to the extent of such beneficiary's interest, at any time by delivery of written direction to the trustee as to any such distribution from the IRA, indicating the amount and form of each distribution. Written notice is to be delivered to the trustee at least 15 days prior to the date of the requested distribution.

Article VI (E) provides that if a beneficiary is a trust, the trustee of the trust is to direct distributions from the trust as provided under paragraph (C) above with respect to the trust's beneficial interest.

Article XXI of IRA X provides that Taxpayer, as grantor of IRA X, may appoint a Designated Representative. The Designated Representative shall not have the power to affect the beneficial enjoyment of the assets of IRA X or to appoint the assets of IRA X to or for the benefit of any person. The sole authority of the Designated Representative is:

1. To receive notices or other communications from the trustee for the benefit of Taxpayer in the event and during the period of Taxpayer's incapacity.
2. To appoint an investment manager for the benefit of Taxpayer (other than the Designated Representative) in the event of Taxpayer's incapacity, provided that Taxpayer has retained sole and exclusive authority to direct investments pursuant to section 2(b) of the Adoption Agreement.
3. To identify and retain a successor trustee of IRA X in the event of the resignation of the trustee during any period of Taxpayer's incapacity, as provided under paragraph B of Article XI of IRA X.
4. To receive information from the trustee and provide information to the trustee in the event of Taxpayer's incapacity with respect to

distributions by the trustee. Notwithstanding the foregoing, the Designated Representative does not have the power to direct distributions or to compel the trustee to make distributions.

The provisions of IRA X indicate that the duty and power of the Designated Representative, referenced in Item 4, are to be advisory only. Article XXI provides that the Designated Representative “shall act at all times as a fiduciary in carrying out its duties and responsibilities hereunder”. Taxpayer has named Daughter, as the Designated Representative of IRA X.

IRA X contains language defining “prohibited transactions”, defining “disqualified person”, and indicating the effect of an IRA grantor, or other disqualified person, engaging in a prohibited transaction. Specifically Article V of IRA X requires compliance with section 408(a). Additionally, Article V(C) of IRA X provides that a disqualified person, as defined in section 4975, may not engage in a prohibited transaction as defined under section 4975. Furthermore, Article V(D) of IRA X provides that neither Taxpayer nor any beneficiary may pledge the assets of IRA X as security or collateral for a loan. Any attempted pledge is invalid.

Article VIII(A) of IRA X provides that the trustee shall have powers relating to the investment of the assets of IRA X as indicated in section 2 of the Adoption Agreement. Article VIII(B) of IRA X provides that in the event and to the extent that Taxpayer grants to the trustee the sole and exclusive authority to make investments of the assets of IRA X, the trustee shall have total discretion to make investments subject to the investment objectives designated by Taxpayer in either section 2(a)(i) or 2(b)(i) of the Adoption Agreement.

Article IX of IRA X describes the powers of the trustee. These powers include the power to sell, exchange, or otherwise dispose of any asset at any time held or acquired under the trust agreement, at public or private sale. The powers enumerated in Article IX of IRA X are subject to the provisions of section 2 of the Adoption Agreement and Article VIII of IRA X. The Designated Representative referred to in Article XXI of IRA X is not referenced in Article IX of IRA X.

Article X(B) of IRA X provides, in relevant part, that Taxpayer may amend IRA X at any time by modifying Taxpayer’s selections among the options available under the Adoption Agreement.

Article XX of IRA X provides that during any period that Taxpayer is under an incapacity, nothing shall preclude a court appointed guardian, within the powers provided by law or court of law of a court of competent jurisdiction, or

any attorney-in-fact appointed by Taxpayer from exercising Taxpayer's powers under the terms of IRA X. However, Taxpayer expressly acknowledges and directs that no attorney-in-fact shall have such power unless the power of attorney under which such attorney-in-fact acts specifically grants to such person in writing such power with respect to Trust. In addition, the power of attorney must specifically address the authority and extent to which the attorney-in-fact may exercise Taxpayer's rights under the Trust Agreement, and must be valid and lawful under applicable state law.

Taxpayer represents that the trustee, Bank S, may rely upon information provided by the Designated Representative in making distributions for the benefit of Taxpayer in the event of incapacity, and the trustee may disburse funds to the Designated Representative as agent for Taxpayer for the purpose of paying living expenses or otherwise providing for the support of Taxpayer in the event of incapacity, but in each case, the Designated Representative will act for the benefit of Taxpayer and not for his or her personal benefit. Taxpayer further represents that the trustee may reimburse the Designated Representative where the Designated Representative has advanced funds for the benefit of Taxpayer under circumstances in which the trustee determines that such expenditures were within the scope of the terms of the trust. It is represented that the trustee of IRA X has the authority to reimburse the Designated Representative named under the terms of IRA X for advances made by the Designated Representative to Taxpayer.

Section 2(a)(i) of the Adoption Agreement related to IRA X provides, generally, that Taxpayer may delegate to the trustee of IRA X the power to make investment decisions. Pursuant to section 2(a)(i), Taxpayer has delegated to the trustee the power to make investment decisions. Under section 2(a)(ii) of the Adoption Agreement, however, the Taxpayer may elect to retain all power and authority to make investment decisions.

Section 2(b) of the Adoption Agreement provides instructions regarding the investment authority during the incapacity of Taxpayer. Under the agreement, the Taxpayer is to select among two options contained in Sections 2(b)(i) and 2(b)(ii). Section 2(b)(i) empowers the trustee with total discretion regarding investment of trust assets in accordance with Paragraph B, of Article VIII of IRA X in the event of Taxpayer's incapacity. Under the second option contained in Section 2(b)(ii), Taxpayer's Designated Representative is to select an investment manager or investment advisor who shall advise the trustee as to how trust assets are to be invested.

Section 222.21 of the State V Statutes provides that any individual retirement arrangement described in section 408 is exempt from the claims of creditors.

Based on the above facts and representations, your authorized representative has requested the following rulings:

1. The establishment and funding by Taxpayer of IRA X and the grant of trust powers to Bank S as trustee does not constitute the taxable transfer of assets by Taxpayer to any person under section 2511 of the Internal Revenue Code, even in the event of Taxpayer's disability or legal incompetency.

2. The incapacity or legal incompetency of Taxpayer will not result in the lapse or release by Taxpayer of a general power of appointment under section 2514 that Taxpayer holds with respect to IRA X.

3. Daughter, as the Designated Representative, does not hold under IRA X any power that is or may be a power of appointment under sections 2514 or 2041.

4. The appointment of Daughter, who is a beneficiary of IRA X, as Designated Representative, and her performance of the acts authorized under the provisions of IRA X, will not result in the loss of exemption of IRA X, as an IRA, pursuant to section 408(e)(2).

5. The Designated Representative appointed under the terms of IRA X is not a fiduciary within the meaning of section 4975(e)(3).

6. With respect to calendar years beginning after calendar year 2001, Taxpayer may compute the section 401(a)(9) minimum required distributions in accordance with the rules contained in the Income Tax Regulations published in the Federal Register on April 17, 2002.

Ruling Requests 1 and 2.

Section 2501 imposes a tax for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident. Section 2511 provides that, subject to certain limitations, the gift tax applies whether the transfer is in trust or otherwise, direct or indirect, and whether the property transferred is real or personal, tangible or intangible.

Section 25.2511-2(c) of the Gift Tax Regulations provides that a gift is incomplete in every instance in which a donor reserves the power to revest the beneficial title to the property in himself. A gift is also incomplete if and to the extent that a reserved power gives the donor the power to name new

beneficiaries or to change the interests of the beneficiaries as between themselves unless the power is a fiduciary power limited by a fixed and ascertainable standard.

Section 2514(a) provides that the exercise or release of a general power of appointment created after October 21, 1942, is deemed to be a transfer of property by the individual possessing the power. Section 2514(c) provides, with some exceptions, that the term “general power of appointment” means a power which is exercisable in favor of the individual possessing the power, his estate, his creditors, or the creditors of his estate.

Section 25.2514-1(b)(2) of the regulations provides that the term “power of appointment” does not include powers reserved by a donor to himself. Thus, the power of the owner of a property interest already possessed by him to dispose of his interest, and nothing more, is not a power of appointment, and the interest is includible in the amount of gifts to the extent it would be includible under section 2511 or other provisions of the Internal Revenue Code.

Section 2041 and the regulations thereunder contain similar rules governing the estate tax consequences where the decedent possesses a general power of appointment over property at the time of death, or releases a general power of appointment prior to death.

As noted above, IRA X will be funded with assets held by Taxpayer in Taxpayer’s rollover IRA. Since Taxpayer is the transferor of the assets passing to IRA X, the gift tax consequences of the transfer of assets from Taxpayer’s rollover IRA to IRA X and the exercise, lapse or release of any powers retained by the Taxpayer with respect to IRA X are determined under section 2511 and not under section 2514. Section 25.2514-1(b)(2) of the regulations.

Article XIV(D) of the IRA X governing instrument and Section 1 of the Adoption Agreement provide that during the life of Taxpayer, Taxpayer retains the right to revoke IRA X by delivery of written notice of the revocation to the Trustee. Further, under Article VI(A) of IRA X, the trust assets are to be held for the exclusive benefit of Taxpayer during her life, and Taxpayer can direct distribution of the trust assets to herself at any time. Accordingly, we conclude that the establishment and funding of IRA X and the grant of trust powers to Bank S as trustee of IRA X will not constitute a completed gift by Taxpayer to any person within the meaning of § 2511. Further, under the terms of IRA X, Taxpayer’s legal incapacity would not extinguish Taxpayer’s power to revoke IRA X or direct distribution of IRA X assets. Accordingly, Taxpayer’s legal incapacity would not cause the transfer to IRA X to become a completed gift under section 2511. cf. Noel v. United States, 380 U.S. 678 (1965); Estate of Alperstein v. Commissioner, 613 F.2d 1213 (2d Cir. 1979); Round v.

Commissioner, 332 F.2d 590 (1st Cir. 1964); Hurd v. Commissioner, 160 F.2d 610 (1st Cir. 1947); Rev. Rul. 75-351, 1975-2 C.B. 369; Rev. Rul. 75-350, 1975-2 C.B. 366.

Ruling Request 3.

Article XXI(A) of IRA X provides that a Designated Representative may be appointed by Taxpayer by execution of a Designated Representative Affidavit. Taxpayer proposes to appoint Daughter as Designated Representative. No Designated Representative shall have the power to affect the beneficial enjoyment of the assets of the Trust or to appoint the assets of Trust to or for the benefit of any person. The sole authority of the Designated Representative is to: (1) receive notices or other communications from the trustee for the benefit of Taxpayer; (2) appoint an investment manager for the benefit of Taxpayer (other than the Designated Representative) in the event of Taxpayer's incapacity; (3) appoint and retain a successor trustee in the event of the resignation of the Trustee during any period of Taxpayer's incapacity; and (4) to receive information from the trustee and provide information to the trustee in the event of Taxpayer A's incapacity with respect to distributions by the trustee.

Based on the nature of the powers held by Daughter as the Designated Representative described above, we conclude that Daughter as Designated Representative does not hold, under IRA X, any power that would constitute a general power of appointment under section 2514 or section 2041.

Ruling Requests 4, 5, and 6.

Section 408(a)(2) provides that the trustee of an individual retirement arrangement must be a bank (as defined in subsection (n)) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which the trust will be administered will be consistent with the requirements of this section.

With respect to ruling requests 4 and 5, section 408(e)(1) provides, in general, that any individual retirement account is exempt from taxation under Subtitle A unless such account has ceased to be an individual retirement account by reason of paragraph (2) or (3) of section 408(e).

Section 408(e)(2)(A) provides, in general, that, if during any taxable year of the individual for whose benefit any individual retirement account is established, that individual or his beneficiary engages in any transaction prohibited by section 4975 with respect to such account, such account ceases to be an individual retirement account as of the first day of such taxable year. For these purposes, the individual for whose benefit any account was established is treated as the creator of such account.

Section 408(e)(2)(B) provides, in general, that in any case in which any account ceases to be an individual retirement account by reason of subparagraph (A) as of the first day of any taxable year, paragraph (1) of subsection (d) applies as if there were a distribution on such first day in an amount equal to the fair market value (on such first day) of all assets in the account (on such first day).

Section 408(e)(4) provides, in general, that during any taxable year of an individual for whose benefit an IRA is established, that individual uses the account, or any portion thereof, as security for a loan, the portion so used shall be treated as distributed to that individual.

Section 4975(a) provides, in part, that the tax imposed by section 4975 shall be paid by any disqualified person who participates in the prohibited transaction (other than a fiduciary acting only as a fiduciary). Section 4975(c) (3) provides a special rule that applies to the individual that establishes an IRA and that individual's beneficiaries with respect to the sanctions described in section 408(e)(2)(A) or section 408(e)(4). The authority of the Service to issue rulings under section 4975(c)(3) was excepted from the transfer of jurisdiction contained in section 102 of Reorganization Plan No. 4 of 1978, 1979-1 C.B. 480. However, the special exception contained in section 4975(c)(3) does not extend to someone who is a disqualified person for a reason other than acting solely as a fiduciary.

Section 4975(c)(1) defines "prohibited transaction" as any direct or indirect-

- (A) sale or exchange, or leasing, of any property between a plan and a disqualified person;
- (B) lending of money or other extensions of credit between a plan and a disqualified person;
- (C) furnishing of goods, services, or facilities between a plan and a disqualified person;
- (D) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan;
- (E) act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interest or for his own account; or
- (F) receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or

assets of the plan.

Section 4975(c)(3) provides, in general, that an individual for whose benefit an IRA is established and the individual's beneficiaries shall be exempt from the tax imposed by section 4975 with respect to any transaction concerning the IRA if, because of the transaction, the IRA ceases to be an IRA because of section 408(e)(2)(A) or if section 408(e)(4) applies to such account.

Section 4975(e)(1) provides, in relevant part, that a "plan" subject to the prohibited transaction rules includes an individual retirement account described in section 408(a) and an individual retirement annuity described in section 408(b).

Section 4975(e)(2) defines the term "disqualified person". In relevant part, sections 4975(e)(2)(A) and (F), provide that a "fiduciary" and a "family member" of a fiduciary (as defined in paragraph (6)) are "disqualified persons." Furthermore, section 4975(e)(2)(G)(iii) provides that a "disqualified person" is a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of the beneficial interest of such trust or estate is owned directly or indirectly, or held by persons described in subparagraphs (A), (B), (C), (D), or (E).

Section 4975(e)(3) defines "fiduciary" as any person -

- (A) who exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets,
- (B) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or
- (C) has any discretionary authority or discretionary responsibility in the administration of such plan.

The term fiduciary includes any person designated under section 405(c)(1)(B) of the Employee Retirement Income Security Act of 1974.

Section 4975(e)(6) provides that for purposes of section 4975(e)(2)(F), the family of any individual shall include his spouse, ancestor, lineal descendant, and any spouse of a lineal descendant.

Regarding ruling request 4, as noted above, section 2(a)(ii) of the Adoption Agreement authorizes an electing IRA holder to retain all power and authority to make investments. Furthermore, as noted above, Taxpayer did not

elect this option with respect to IRA X. Although Taxpayer did not elect, under the Adoption Agreement, to retain control over IRA X investments, she could have done so. Furthermore, pursuant to section X(B) of IRA X, she may still do so. Thus, in view of her ability to control, by means of her election under the Adoption Agreement, who makes the IRA X investments, Taxpayer is clearly a “fiduciary” with respect to IRA X and, thereby, a “disqualified person” as defined in section 4975(e)(2)(A). Furthermore, since Taxpayer is the sole individual for whose benefit IRA X was established, IRA X is itself a disqualified person pursuant to section 4975(e)(2)(G)(iii).

Additionally, with respect to ruling request 5, Article XXI of IRA X provides, in relevant part, that a Designated Representative must act as a fiduciary in carrying out its duties. Furthermore, the Designated Representative’s fiduciary responsibilities apply solely with regard to the powers enumerated in Article XXI of IRA X and, pursuant to said Article XXI, a “Designated Representative” shall not have “the power to affect the beneficial enjoyment of the assets of the Trust (IRA X) or to appoint the assets of this Trust to or for the benefit of any person”. In this regard, your authorized representative argues that a “Designated Representative” appointed under Article XXI of IRA X acts for the benefit and interest of others (i.e. the Grantor). As a result, a “Designated Representative” is a “fiduciary” under the laws of State V and, as such, is subject to restrictions imposed under state law regarding the exercise of the powers granted under Article XXI. Thus, Taxpayer argues that the term “fiduciary” as used in IRA X does not have the same meaning given it under section 4975(e)(3).

However, even if Daughter, who is designated as Designated Representative and beneficiary with respect to IRA X, is not a “fiduciary” as that term is used in section 4975(e)(3), as noted above, Daughter is Taxpayer’s daughter and Taxpayer is a “fiduciary” as that term is used in section 4975(e)(2)(A).

Since Taxpayer is a “fiduciary” as well as the person for whom IRA X is established, the special rule set forth in section 4975(c)(3) is not applicable to Taxpayer. Moreover, the provisions of section 4975(c)(3) would only extend to Daughter if Daughter were merely a beneficiary of IRA X, and not a disqualified person within the meaning of section 4975(e)(2).

Thus, with respect to ruling request 5, we conclude as follows:

Assuming Daughter is not a “fiduciary” within the meaning of section 4975(e)(3), Daughter, Taxpayer’s “Designated Representative” appointed under the terms of IRA X, is a “disqualified person” within the meaning of section

4975(e)(2)(F) because Daughter is a family member with respect to Taxpayer as that term is defined in section 4975(e)(6). Whether any transactions entered into by Daughter as they relate to IRA X are prohibited can only be determined by the Department of Labor pursuant to its authority in section 102 of Reorganization Plan No. 4 of 1978.

With respect to ruling request 4, as discussed above, Daughter is a beneficiary under IRA X and Trust M, as well as the Designated Representative who possesses certain powers under the terms of IRA X. Among those powers is the ability to identify and retain a successor trustee of IRA X in the event of the resignation of the Trustee during any period of Taxpayer's incapacity.

The issue to be resolved in this case is whether the enumerated powers held by the Designated Representative including the power to identify and retain a successor trustee under certain circumstances, and the exercise of any of those powers in a fiduciary manner, results in a "prohibited transaction" as defined in Section 4975(c)(1) thus invoking the sanction described in section 408(e).

The trustee powers with respect to IRA X are described in Article IX. Under Article IX, the trustee has the authority to direct investment of IRA X assets. Daughter, the Designated Representative, has the power to identify and retain a successor trustee under certain circumstances. Furthermore, as Designated Representative, Daughter may, in certain, limited circumstances, appoint an investment manager for the benefit of Taxpayer, which investment manager has the power to direct the trustee as to how to invest IRA X assets. However, Daughter does not have the authority to direct the investment of the IRA X assets. The language of Article XXI of IRA X specifically provides that Daughter, or any other Designated Representative, cannot affect the beneficial enjoyment of the IRA X assets. Thus, under the terms of IRA X, Bank S, the trustee of IRA X, or any successor trustee, is to exercise its powers independently of the Designated Representative.

Therefore, with respect to ruling request 4, we conclude as follows:

A transaction described in section 4975(c)(1) between the Designated Representative, a disqualified person, and IRA X, a plan, with respect to the IRA X assets, appears to be precluded. Accordingly, the appointment of Daughter, who is a beneficiary of IRA X, as Designated Representative, pursuant to the language of IRA X, and her performance of the acts authorized under the provisions of IRA X, may not result in the loss of the exemption of IRA X, as an IRA, pursuant to section 408(e)(2).

With respect to ruling request 6, section 408(a)(6) 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.

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) 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 and one-half.

With respect to ruling request 6, Final Income Tax Regulations under sections 401(a)(9) and 408(a)(6) were published on April 17, 2002. See 67 FR 18987-19028 (April 17, 2002); 2002-19 I.R.B. 852 (May 13, 2002). The Preamble to the Final Regulations, in relevant part, provides that the regulations apply for determining required minimum distributions for calendar years beginning after January 1, 2003. For determining required distributions for calendar year 2002, taxpayers may rely on proposed regulations published in 1987, proposed regulations published in 2001, or the Final Regulations.

Section 1.401(a)(9)-5 of the Final Regulations, Q&A-4(a) provides the general rule for determining the applicable distribution period for required minimum distributions for distributions in calendar years up to and including the distribution calendar year that includes the employee's (IRA holder's) year of death. Such lifetime distributions are calculated using the Uniform Lifetime Table in A-2 of section 1.401(a)(9)-9 of the Final Regulations.

Section 1.401(a)(9)-9 of the Final Regulations, Q&A-2, sets forth the Uniform Lifetime Table for lifetime distributions to an employee (IRA holder) in situations in which the employee's spouse is either not the sole designated beneficiary or is the sole designated beneficiary but is not more than 10 years younger than the employee.

Section 1.401(a)(9)-4 of the Final Regulations, Q&A-4(b), provides, in relevant part,

that in order for a spouse to be considered the sole designated beneficiary for purposes of determining the applicable distribution period for a distribution calendar year during the employee's (IRA holder's) lifetime, the spouse must be the sole beneficiary of the employee's entire interest at all times during the distribution calendar year.

Section 1.401(a)(9)-5 of the Final Regulations, Q&A-5(a), provides, in general, that if an employee dies on or after his required beginning date, in order to satisfy the requirements of section 401(a)(9)(B)(i), the applicable distribution period for distribution calendar years after the distribution calendar year containing the employee's date of death if the employee has a designated beneficiary as of the date determined under A-4 of section 1.401(a)(9)-4, is either the longer of: (i) the remaining life expectancy of the employee's designated beneficiary determined in accordance with either paragraph (c)(1) or paragraph (c)(2) of this A-5; or (ii) the remaining life expectancy of the employee determined in accordance with paragraph (c)(3) of this A-5.

Section 1.401(a)(9)-5 of the Final Regulations, Q&A-5(c)(1), provides, in general, that, with respect to a non-spouse 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 death. In subsequent calendar years, the applicable distribution period is reduced by one for each calendar year that has elapsed after the calendar year immediately following the calendar year of the employee's death.

Section 1.401(a)(9)-4 of the Final Regulations, Q&A-4, provides, in relevant part, that in order to be a designated beneficiary, an individual must be a beneficiary as of the date of (the employee's or IRA holder's) death. Generally, an employee's designated beneficiary will be determined based on the beneficiaries designated as of the date of death who remain beneficiaries as of September 30th of the calendar year following the calendar year of death.

Section 1.401(a)(9)-4 of the Final Regulations, Q&A-3, provides that only individuals may be designated beneficiaries for purposes of section 401(a)(9). A person who is not an individual, such as the employee's estate, may not be a designated beneficiary. However, Q&A-5 of section 1.401(a)(9)-4 provides that beneficiaries of a trust with respect to the trust's interest in an employee's benefit may be treated as designated beneficiaries if the following requirements are met:

(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 that it becomes irrevocable upon the death of the employee;

(3) The beneficiaries of the trust who are beneficiaries with respect to the trust's

interest in the employee's benefit are identifiable within the meaning of A-1 of this section from the trust instrument;

(4) The documentation described in A-6 of this section has been provided to the plan administrator.

Section 1.401(a)(9)-4 of the Final Regulations, Q&A-6(b), provides, generally, with respect to required minimum distributions after the death of the employee, that documentation described therein must be provided by the trustee of the trust/beneficiary to the plan administrator by October 31st of the calendar year following the calendar year in which the employee died.

As noted above, with respect to calendar years up to and including calendar year 2001, Taxpayer has been receiving required distributions from Taxpayer's rollover IRA over her single life expectancy. However, as also noted, taxpayers are permitted to compute minimum required distributions for calendar year 2002 in accordance with the Final Regulations referenced above.

Taxpayer timely named Trust M as the beneficiary of her rollover IRA. Trust M complies with the requirements of the Final Regulations so that, as a result, the beneficiaries of Trust M may be looked at to determine which, if any, is the designated beneficiary of Taxpayer's rollover IRA.

Spouse, Taxpayer's spouse, is deceased. Thus, Spouse cannot be the sole designated beneficiary of Taxpayer's rollover IRA for calendar year 2002. Furthermore, for calendar years subsequent to 2002, unless Taxpayer were to remarry and name her spouse as the sole beneficiary of IRA X, Taxpayer has no spouse who may be treated as the sole designated beneficiary of her IRA. Thus, in accordance with section 1.401(a)(9)-9 of the Final Regulations, Q&A-2, the Uniform Lifetime Table for lifetime distributions to an employee (IRA holder) sets forth the period over which required distributions from her rollover IRA must be made. Thus, with respect to ruling request 6, we conclude as follows:

With respect to calendar year 2002, and subsequent calendar years Taxpayer may compute section 401(a)(9) minimum required distributions from her rollover IRA in accordance with the rules contained in the Income Tax Regulations published in the Federal Register on April 17, 2002. Specifically, Taxpayer may use the Uniform Lifetime Table provided in section 1.401(a)(9)-9 of the Final Regulations, Q&A-2.

With respect to distribution calendar years subsequent to the year in which Taxpayer dies, we are, at the present time unable to issue a letter ruling as to the appropriate distribution period and as to whom, if anyone, will be

treated as Taxpayer's designated beneficiary. Although after Taxpayer's death, Daughter will be the lifetime beneficiary of payments from Taxpayer's rollover IRA (pursuant to the terms of Trust M), we, in applying the provisions of the Final Regulations, must look to the individual(s) or entity(ies) that will be the beneficiaries of the rollover IRA when Taxpayer dies. At this point, we are unable to do so.

Please note that our response to your sixth ruling request indicates that Taxpayer may, but is not required to, apply the provisions of the Final Regulations to calendar year 2002 minimum required distributions. For calendar years after 2002, minimum required distributions from any IRA, including IRA X, must be calculated pursuant to the terms of the Final Regulations published in the Federal Register on April 17, 2002.

This ruling request assumes that Taxpayer's rollover IRA has met and will continue to meet the requirements of section 408(a) at all time relevant thereto.

This ruling is directed solely 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.

Sincerely,

George Masnik
Branch Chief, Branch 4
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:
Copy for section 6110 purpose