



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

200449042

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

UICs: 401.06-02  
408.00-00

SEP - 8 2004

SE: T. EP. RAT 3

LEGEND:

Taxpayer A =

Taxpayer B =

Taxpayer C =

Taxpayer D =

IRA X =

Company M =

Trust T =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

State W =

Percentage 1 =

Percentage 2 =

Percentage 3 =

Dear \_\_\_\_\_ :

This is in response to the \_\_\_\_\_, request for letter rulings under section 401(a)(9) of the Internal Revenue Code ("Code"), as amended by correspondence

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received by the Internal Revenue Service on \_\_\_\_\_ and \_\_\_\_\_. The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 1, 1934, died on Date 2, 2003, a resident of State W, without having attained age 70 ½. Taxpayer A was survived by his spouse, Taxpayer B, and his two daughters, Taxpayers C and D. Taxpayer C is older than Taxpayer D. Taxpayer B is older than Taxpayer C.

At the time of his death, Taxpayer A was the owner of IRA X, an individual retirement account which it is represented complies within the requirements of Code § 408(a), maintained with Company M. By means of a beneficiary designation dated Date 4, Taxpayer A named Trust T as the beneficiary of his IRA X. Your authorized representative has asserted on your behalf that Trust T is valid under the laws of State W. Your authorized representative has also asserted on your behalf that a copy of Trust T was presented to Company M within nine (9) months of Date 2, \_\_\_\_\_ the date of Taxpayer A's death.

Trust T was established by Taxpayer A on Date 3, \_\_\_\_\_ and has been subsequently amended. Article Seventh C. of Trust T provides that Trust T became irrevocable at the death of Taxpayer A. Article Eleventh B of Trust T provides that Taxpayer B became the sole trustee of Trust T upon the death of Taxpayer A.

Article Sixth B. of Trust T provides, in relevant part, that upon the death of Taxpayer A, Percentage 1 of the Trust T estate shall be distributed to Taxpayer B; Percentage 2 of the Trust T estate shall be distributed to Taxpayer C; and Percentage 3 of the Trust T estate shall be distributed to Taxpayer D.

Your authorized representative has asserted on your behalf that, consistent with Article Sixth D. of Trust T, no portion of IRA X has been or will be used to pay Taxpayer A's debts, debts associated with his estate, debts associated with his funeral, estate taxes etc.

Taxpayers B, C, and D have requested that Company M divide IRA X, by means of trustee-to-trustee transfers, into three IRAs. Each of the three transferee IRAs will be maintained in the name of Taxpayer A (Deceased). One of the three transferee IRAs will hold Percentage 3 of IRA X and will be set up and maintained to benefit Taxpayer D as a beneficiary of Trust T. Code § 401(a)(9) required distributions from the transferee IRA set up to benefit Taxpayer D will be based on the life expectancy of Taxpayer C.

After the three transferee IRAs are set up, the transferee IRA set up to benefit Taxpayer B will be converted, by means of a distribution and subsequent rollover, into an

IRA set up and maintained in the name of Taxpayer B. Said distribution and rollover will be accomplished no later than September 30,

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

- (1) That Trust T constitutes a qualified "see-through" trust within the meaning of section 1.401(a)(9)-4 of the "Final" Regulations, Question and Answer-5;
- (2) That Company M's dividing IRA X, by means of trustee to trustee transfers, into three transferee IRAs in the name of Taxpayer A (Deceased) including one set up to benefit Taxpayer D as a beneficiary of Trust T will not result in the transferee IRA set up to benefit Taxpayer D failing to comply with the requirements of Code § 408(a) including the requirements of Code § 408(d)(3);
- (3) That for purposes of determining the amount(s) of Code § 401(a)(9) required distributions from the transferee IRA set up and maintained in the name of Taxpayer A (Deceased) for the benefit of Trust T, beneficiary thereof, to benefit Taxpayer D, the beneficiary of Percentage 3 of IRA X, the life expectancy of Taxpayer B may be disregarded; and
- (4) That Taxpayer D may receive Code § 401(a)(9) required distributions from the transferee IRA set up to benefit her over the life expectancy of Taxpayer C.

With respect to your ruling requests, Code 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 an IRA trust is maintained. -

Code section 401(a)(9)(C) provides, in relevant part, that distributions from an IRA are required to begin to the IRA holder no later than April 1 of the calendar year following the calendar year during which the IRA holder attains age 70 ½.

Code § 401(a)(9)(B)(ii) provides, in summary, that a trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), the entire interest of the employee will be distributed within 5 years after the death of the employee.

Code § 401(a)(9)(B)(iii) provides, in general, that if any portion of the interest of a deceased plan participant is payable to (or for the benefit of a designated beneficiary), such portion will be distributed beginning not later than 1 year after the date of the deceased's death (or a later date as prescribed by the Secretary under Regulations) in accordance with regulations over the life of the designated beneficiary (or a period not extending beyond the life expectancy of the beneficiary).

Section 401(a)(9)(E) of the Code provides, in summary, that the term "designated beneficiary" means any individual designated as a beneficiary by the employee.

With respect to your ruling requests, "Final" Income Tax Regulations under Code sections 401(a)(9) and 408(a)(6) were published in the Federal Register at 67 Federal Register 18987-19028 (April 17, 2002), and in the Internal Revenue Bulletin at 2002-19 I.R.B. 852 (May 13, 2002). The Preamble to the "Final" Regulations, in relevant part, provide that the regulations apply for determining required minimum distributions for calendar years beginning after January 1, 2003.

Section 1.401(a)(9)-3 of the "Final" regulations, Q&A-1, describes, in relevant part, the "life expectancy" exception to the 5-year rule.

Section 1.401(a)(9)-3 of the "Final" regulations, Q&A-3(a) provides, in general, that, with respect to the life expectancy exception to the 5-year rule described in Code § 401(a)(9)(B)(iii), and in A-1, distributions are required to begin to a non-spouse beneficiary on or before the end of the calendar year immediately following the calendar year in which the employee died. Q&A-3(a) adds that this rule also applies to the distribution of the entire remaining benefit if another individual is a designated beneficiary in addition to the employee's surviving spouse.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-5(b), provides, in general, that if an employee dies before his required beginning date, in order to satisfy the requirements of Code § 401(a)(9)(B)(iii) or (iv) and the life expectancy rule described in A-1 of § 1.401(a)(9)-3, the applicable distribution period for distribution calendar years after the distribution calendar year containing the employee's date of death is determined in accordance with paragraph (c) 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(a), 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 30 of the calendar year following the calendar year of death.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-4(a) further provides, in relevant part, that any person who was a beneficiary as of the date of the employee's death but who is not a beneficiary as the following September 30 (e.g. because the person receives the entire benefit to which he is entitled before that September 30), is not taken into account in determining the employee's designated beneficiary for purposes of determining the distribution period after the employee's death.

The rule in Q&A-4(a) applies to amounts distributed from a qualified plan which pass through a valid "see-through" trust.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-4(c) provides, in relevant part, that, for purposes of this A-4, an individual who is a beneficiary as of the date of the employee's death and dies prior to September 30 of the calendar year following the calendar year of death, without disclaiming, continues to be treated as a beneficiary for purposes of determining minimum required distributions after the employee's death without regard to the identity of the employee's successor beneficiary. This rule is summarized in the Preamble to the "Final" Regulations.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-7(a)(1) provides, that, except as otherwise provided in paragraph (c) of this A-7 (not pertinent to this ruling request), if more than one individual is designated as a beneficiary with respect to an employee as of the applicable date, the designated beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the applicable distribution period.

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 §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 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 31 of the calendar year following the calendar year in which the employee died.

Section 1.401(a)(9)-8 of the "Final" regulations, Q&A-2(a) provides the "separate account" rules with respect to defined contribution plans. A "separate account" is an account under which the beneficiary or beneficiaries differ from the beneficiary or beneficiaries of the other accounts. In general, if separate accounts are set up, 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 is not aggregated with the other separate accounts under the plan in order to determine whether the distributions from such separate account satisfy the requirements of Code § 401(a)(9). Instead, the rules in Code § 401(a)(9) apply separately to each separate account under the plan.

Section 1.401(a)(9)-8 of the "Final" regulations, Q&A-3, provides that a separate account is a separate portion of an employee's benefit which reflects the separate interest of an employee's beneficiary under the plan as of the employee'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 of the "Final" regulations, Q&A-5(c), provides, in relevant part, that the separate account rules under A-2 of § 1.401(a)(9)-8 are not available to beneficiaries of a trust with respect to the trust's interest in the employee's benefit.

Section 1.401(a)(9)-9 of the "Final" regulations provides the life expectancy and distribution period tables used to determine minimum required distributions. The

Uniform Lifetime Table is the table to be used to determine the life expectancy of an individual.

Code section 408(d)(1) provides that, except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

Code section 408(d)(3) provides that section 408(d)(1) does not apply to a rollover contribution if such contribution satisfies the requirements of sections 408(d)(3)(A) and (d)(3)(B).

Code section 408(d)(3)(A)(i) provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the account is maintained if the entire amount received (including money and any other property) is paid into an IRA (other than an endowment contract) for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution.

Code section 408(d)(3)(C)(i) provides, in pertinent part, that, in the case of an inherited IRA, section 408(d)(3) shall not apply to any amount received by an individual from such account (and no amount transferred from such account to another IRA shall be excluded from income by reason of such transfer), and such inherited account shall not be treated as an IRA for purposes of determining whether any other amount is a rollover contribution.

Code section 408(d)(3)(C)(ii) provides that an IRA shall be treated as inherited if the individual for whose benefit the account is maintained acquired such account by reason of the death of another individual, and such individual was not the surviving spouse of such other individual. Thus, pursuant to Code section 408(d)(3)(C)(ii), a surviving spouse who acquires IRA proceeds from and by reason of the death of her husband, may elect to treat those IRA proceeds as her own and roll them over into her own IRA.

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

Additionally, a trustee to trustee transfer, as described in Rev. Rul. 78-406, does not constitute a distribution or payment as those terms are defined for purposes of Code § 408(d).

Finally, Rev. Rul. 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.

With respect to your first ruling request, Trust T is the named beneficiary of Taxpayer A's interest in IRA X. Your authorized representative has asserted, on your behalf, that Trust T is a valid trust under the laws of State W; that Trust T became irrevocable upon the death of Taxpayer A (as provided for under Article Seventh C. of Trust T); and that documentation relating to Trust T's status as the beneficiary of Taxpayer A's interest in IRA X was given to the administrator of IRA X by the date required under the "Final" Regulations. Furthermore, the Service notes that the identity of each person or entity entitled to receive any portion of Taxpayer A's interest in IRA X upon Taxpayer A's death is determinable by perusing the provisions of Trust T.

Thus, with respect to your first ruling request, we determine as follows:

- (1) That Trust T constitutes a qualified "see-through" trust within the meaning of section 1.401(a)(9)-4 of the "Final" Regulations, Question and Answer-5.

With respect to your remaining ruling requests, pursuant to the paragraphs of Code section 408(d)(3) referenced above, Taxpayer D, who is not the surviving spouse of Taxpayer A, may not receive a distribution of her Percentage 3 interest in IRA X and roll over said distribution into another IRA. However, as noted above, a trustee to trustee transfer described in Rev. Rul. 78-406 does not constitute a distribution and transfer. Furthermore, such a transfer may be accomplished after the death of the IRA holder on behalf of the beneficiaries of a decedent's IRA.

As noted above, in general, if more than one beneficiary exists with respect to an IRA, Code § 401(a)(9) minimum required distributions must be based on the life expectancy of the eldest beneficiary. In this case, Taxpayer B is the eldest of Taxpayers B, C, and D.

However, as noted above, section 1.401(a)(9)-4 of the "Final" regulations, Q&A-4(a) provides, in relevant part, that any person who was a beneficiary as of the date of the employee's death but who is not a beneficiary as the following September 30 (e.g. because the person receives the entire benefit to which he is entitled before that



September 30), is not taken into account in determining the employee's designated beneficiary for purposes of determining the distribution period after the employee's death.

In this case, Taxpayer B will have received a distribution of her Percentage 1 interest in IRA X and rolled over said interest into an IRA set up and maintained in her name no later than September 30. As a result, by that date, Taxpayer B will be entitled to receive nothing additional from IRA X. Thus, pursuant to the rule in section 1.401(a)(9)-4 of the "Final" regulations, Q&A-4(a), Taxpayer B may be disregarded for purposes of determining required distributions from the transferee IRA set up to benefit Taxpayer D. Therefore, it is necessary to consider only the life expectancies of Taxpayers C and D for Code § 401(a)(9) purposes. Taxpayer C is older than Taxpayer D.

Therefore, with respect to your second, third and fourth requests, we conclude as follows:

- (2) That Company M's dividing IRA X, by means of trustee to trustee transfers, into three transferee IRAs in the name of Taxpayer A (Deceased) including one set up to benefit Taxpayer D as a beneficiary of Trust T will not result in the transferee IRA set up to benefit Taxpayer D failing to comply with the requirements of Code § 408(a) including the requirements of Code § 408(d)(3);
- (3) That for purposes of determining the amount(s) of Code § 401(a)(9) required distributions from the transferee IRA set up and maintained in the name of Taxpayer A (Deceased) for the benefit of Trust T, beneficiary thereof, to benefit Taxpayer D, the beneficiary of Percentage 3 of IRA X, the life expectancy of Taxpayer B may be disregarded; and
- (4) That Taxpayer D may receive Code § 401(a)(9) required distributions from the transferee IRA set up to benefit her over the life expectancy of Taxpayer C.

This letter ruling is based on the assumption that IRA X and the transferee IRA set up in the name of Taxpayer A (Deceased) to benefit Taxpayer D either meet, have met, or will meet the requirements of Code section 408(a) at all times relevant thereto. Finally, it assumes that Trust T is valid under State law as asserted.

This letter ruling is based on the facts and representations contained herein.

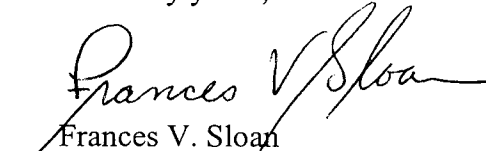
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This letter is directed only to the taxpayer that requested it and is based solely on the representations made with respect thereto. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

The Service's point of contact with respect to this letter ruling is  
, Esq. (ID: ) who may be reached at 202- (phone) or 202  
(FAX).

Sincerely yours,

  
Frances V. Sloan  
Manager, Employee Plans  
Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose