



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

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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

NOV 30 2005

UICS; 401.06-02  
408.03-00  
408.06-00

SE.T:EP:RA.T3

LEGEND:

Decedent:

Taxpayer B:

Taxpayer C:

Taxpayer D:

Taxpayer E:

Taxpayer F:

Taxpayer G:

Taxpayer H:

Charity E:

Charity F:

Charity G:

Amount 1:

Amount 2:

Sum 2:

Sum 3:

Sum 4:

Trust T:

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Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Date 8:

Date 9:

Date 10:

Date 11:

Date 12:

Date 13:

Month 1:

Company M:

IRA X:

IRA Y:

State V:

State W:

City X:

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City Y:

Court Order:

Dear [REDACTED]:

This is in response to the request for letter rulings under sections 401(a)(9), and 408(d) of the Internal Revenue Code ("Code"), as supplemented by correspondence dated and . The following facts and representations support your ruling request.

Decedent died on Date 2, 2003, a resident of State V. Decedent's date of birth was Date 1, 1915; thus, Decedent had attained his "required beginning date" as that term is defined in section 401(a)(9)(C) of the Code. At the time of his death, the Decedent owned an individual retirement account (IRA X), with Company M of which the named beneficiary, Trust T, was originally created on Date 3, 1992, modified on Date 4, 2002 and further modified by the Court Order dated Date 13, 2004. The date of Decedent's beneficiary designation was Date 5, 2002. Taxpayer B is the trustee of Trust T. As of Decedent's date of death, IRA X had a value of Amount 1.

Decedent was survived by six (6) children: Taxpayer B whose date of birth was Date 6, 1946; Taxpayer C whose date of birth was Date 7, 1949; Taxpayer D whose date of birth was Date 8, 1960; Taxpayer E whose date of birth was Date 9, 1952; Taxpayer F whose date of birth was Date 10, 1962; and Taxpayer G whose date of birth was Date 11, 1948. Taxpayer B is the eldest of Taxpayers B through G.

Taxpayer G is currently married to Taxpayer H who is younger than Taxpayer B. Taxpayer G has no children.

Article I(B), section (1), of Trust T provides that upon the death of the Decedent, the sum of Sum 4 shall be distributed "in cash or in kind" as follows: Sum 2 to Charity E of City X, State W; Sum 3 to Charity F; and an additional Sum 3 to Charity G of City Y, State V (collectively, the Charities).

Article I(B), sections (2), (3), and (4), of Trust T provide that the residue of the Trust property shall be distributed to the Decedent's children outright or in trust as provided therein. Pursuant to said sections of Article I(B), the shares of each child except Taxpayer G are to be distributed outright. Taxpayer G's share is to be held in trust. Taxpayer C is the trustee of Taxpayer G's share.

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Article II(A)(12) of Trust T provides that the trustee shall possess the discretion and power to make distributions or divisions of principal in cash or in kind, or both, at fair market values current at a date of distribution fixed by the trustee, without any requirement that each item be distributed or divided ratably.

Relevant provisions of Trust T, as amended, provide as follows:

1. The trustee of Trust T may not, after September 30 of the year following the year of Decedent's death, distribute any portion of IRA X to or for the benefit of Decedent's estate, any charity or any non-individual beneficiary;
2. After September 30 of the year following the year of Decedent's death, IRA X may not be used for payment of Decedent's debts, taxes, expenses of administration or other claims against Decedent's estate, nor for the payment of transfer taxes due on account of Decedent's death.;
3. Taxpayer G's share of IRA X is to be held in trust. Provisions of Taxpayer G's trust provide for payments to her of income, principal (at the Trustee's discretion), and indicate that the Decedent's intent in creating the trust was to provide for Taxpayer G's education, health, maintenance, comfort and general welfare during her lifetime.
4. Upon the death of Taxpayer G, Taxpayer H is to take any remaining portion of Taxpayer G's share if he was married to her at her death, and if Taxpayer G died with no living descendants. If not paid to Taxpayer H, any remaining portion of her share of IRA X may not be paid to any non-individual beneficiary or to any individual born before Date 6, 1946.

It has been represented that Trust T is valid under the laws of State V. Furthermore, Article VII of Trust T, as amended, in relevant part, provides that Trust T may only be revoked by Decedent. Thus, Trust T became irrevocable at the death of Decedent. Finally, the documentation required by section 1.401(a)(9)-4 of the "Final" Income Tax Regulations, Question and Answer-6, was provided to the custodian/administrator of IRA X by October 31, 2004..

During Month 1, 2003, IRA X was transferred, by means of a trustee to trustee transfer, to IRA Y, with Company M, titled as follows: "Trust T-Taxpayer B trustee-IRA beneficiary distribution account ("BDA") (original depositor-Decedent)- Company M, Custodian". In conjunction with said transfer, the trustee of Trust T instructed Company M, the custodian of IRA X and of IRA Y, as custodian, to divide IRA X (IRA Y) into shares, each titled in the name of the decedent for the benefit of a beneficiary under the trust. Thus, each of the Charities became the beneficiary of an IRA equal in value, at the

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time of division, to the dollar amount to which it was entitled under the provisions of Trust T.

Each "share" of IRA Y read as follows: "Taxpayer....-IRA BDA-(Original depositor Decedent)-Company M, Custodian.

The value of IRA Y as of the end of Month 1, 2003 was Amount 2.

Minimum required distributions with respect to calendar years subsequent to calendar year 2003 have been taken from IRA X (or IRA Y).

On or about Date 12, 2004, which date predated September 30, 2004, Trust T completed in kind distribution(s) of IRA X totaling Sum 4 to Charities.

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

1. The transfer of IRA X to IRA Y (and eventually to the IRAs set up to benefit the beneficiaries of Trust T) did not constitute distributions within the meaning of Code section 408(d)(1) and did not constitute attempted rollovers within the meaning of Code section 408(d)(3):
2. Trust T, as amended, is a qualified "See-Through Trust" within the meaning of section 1.401(a)(9)-4 of the "Final" regulations, Q&A-5; and
3. Required minimum distributions may be made to the beneficiaries of Trust T from the IRAs maintained in the name of the Decedent for their benefit with Company M based upon the life expectancy of Taxpayer B using the "Single Life Table" found in section 1.401(a)(9)-9 of the "Final" regulations.

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)(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

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beginning date, over the life of such employee or over the lives of such employee and a designated beneficiary or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary.

Section 401(a)(9)(C) of the Code provides, in relevant part, that, for purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the calendar year in which the IRA holder attains age 70 1/2.

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

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)-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 30 of the calendar year following the calendar year of death. Consequently, any person who was a beneficiary as of the date of the employee's death, but is not a beneficiary as of that September 30 (e.g. because the person receives the entire benefit to which the person 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 for required minimum distributions after the employee's death. Accordingly, if a person disclaims entitlement to the employee's benefit pursuant to a disclaimer that satisfies § 2518 by that September 30 thereby allowing other beneficiaries to receive the benefits in lieu of that person, the disclaiming person is not taken into account in determining the employee's designated beneficiary.

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 there is no corpus.

- (2) the trust is irrevocable or will, by its terms, become 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) relevant documentation has been timely provided to the plan administrator.

Section 1.401(a)(9)-4 of the "Final" Regulations, Q&A-6(b), provides in relevant summary, that, at a minimum, documentation sufficient to enable an IRA custodian to identify beneficiaries of an IRA must be provided by a trustee to the custodian by October 31 of the calendar year immediately following the calendar year in which the IRA owner died.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-5(a) provides, in summary, that if an employee 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 date of death is either—(1) If the employee has a designated beneficiary as of the date determined under A-4 of § 1.401(a)(9)-4, the longer of—

- (i) the remaining life expectancy of the employee's designated beneficiary determined in accordance with paragraph (c)(1) or (2) of this A-5; and
- (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 an employee 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 death. In subsequent years, the applicable distribution 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)-5 of the "Final" regulations, Q&A-7, provides, in general, that if more than one beneficiary is designated as a beneficiary by an employee as of the applicable date for determining the designated beneficiary under A-4 of § 1.401(a)(9)-4, the beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining required distributions.

Section 1.401(a)(9)-9 of the "Final" regulations, Q&A-1, provides the relevant Single Life Expectancy Table.

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 section 401(a)(9). Instead, the rules in Code section 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 are not available to beneficiaries of a trust with respect to the trust's interest in an employee's benefit.

Code section 408(d)(1) provides, generally, that, in accordance with the rules of section 72, amounts paid or distributed from an IRA are included in the gross income by the payee or distributee.

Code section 408(d)(3)(C) provides, generally, that amounts from an "inherited" IRA cannot be rolled over into another IRA. In general, an "inherited" IRA is an IRA maintained by an individual who acquired said IRA by reason of the death of another if the acquiring individual is not the surviving spouse of said other individual. In this case, as noted above, Taxpayers B through G are Taxpayer A's children.

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

Neither the Code nor the "Final" regulations promulgated under Code section 401(a)(9) preclude the posthumous division of IRA X into more than one IRA. However, the "Final" regulations do preclude "separate account" treatment for Code section 401(a)(9) purposes where amounts pass through a trust.

In this case, as noted above, Trust T was the named beneficiary of Decedent's IRA X (subsequently IRA Y). Trust T was established by Decedent; valid under the laws of State V; and became irrevocable at the death of Decedent. The beneficiaries of Trust T, identified by perusing its terms (including amendments thereto) included: (1) Charities; (2) Taxpayers B through G; and (3) certain named remaindermen of Taxpayer G's share of IRA X.

The "Final" regulations, cited above, provide that only individuals may qualify as designated beneficiaries for purposes of Code section 401(a)(9); thus, Charities were ineligible to qualify as such. However, as noted above, Charities received their shares of IRA X (IRA Y) before September 30, 2004. Thus, in accordance with section 1.401(a)(9)-4 of the "Final" regulations, Q&A-4, each of the Charities may be disregarded for purposes of determining which beneficiary of Trust T is the eldest and has the shortest life expectancy.

Of the Trust T beneficiaries remaining as of September 30, 2004, Taxpayer B is the eldest and, as a result, has the shortest life expectancy. Although the provisions of Trust T provide for remaindermen to take at the death of Taxpayer G, who did not receive her share of IRA X (IRA Y) outright as did her siblings, no potential remainderman can be older than Taxpayer B.

As noted above, the separate account rules of Section 1.401(a)(9)-8 of the "Final" regulations, Q&A- 2(a), do not apply to amounts passing through a trust. Thus, the share of each beneficiary of Trust T, irrespective of the age of said beneficiary, must be based on the life expectancy of Taxpayer B. In this case, the Table to be used to determine minimum required distributions is found at Section 1.401(a)(9)-9 of the "Final" regulations, Q&A-1. Furthermore, the applicable distribution period must be computed in accordance with Section 1.401(a)(9)-5 of the "Final" regulations, Q&A- 5(c)(1).

Thus, with respect to your ruling requests, we conclude as follows:

1. The transfer of IRA X to IRA Y (and eventually to the IRAs set up to benefit the beneficiaries of Trust T) did not constitute distributions within the meaning of Code section 408(d)(1) and did not constitute attempted rollovers within the meaning of Code section 408(d)(3);
2. Trust T, as amended, is a qualified "See-Through Trust" within the meaning of section 1.401(a)(9)-4 of the "Final" regulations, Q&A-5; and

3. Required minimum distributions may be made to the beneficiaries of Trust T from the IRAs maintained in the name of the Decedent for their benefit with Company M based upon the life expectancy of Taxpayer B using the "Single Life Table" found in section 1.401(a)(9)-9 of the "Final" regulations. This ruling response does not apply to the Charities.

Please note that the letter ruling does not address issues, if any, that arise under sections 691(a) and 642(c)(1) of the Code. In that regard, this letter ruling does not address the issue of whether Trust T realized income when portions of IRA X (now IRA Y) were transferred to Charities.

This ruling letter is based on the assumption that IRA X either has met, is meeting, or will meet the requirements of Code section 408(a) at all times relevant thereto. Furthermore, it assumes that IRA Y will also meet the requirements of Code section 408(a) at all times relevant thereto. It also assumes that Trust T is valid under the laws of State V as represented. Additionally, it assumes that the transfer of amounts from IRA X to IRA Y (and the sub-IRAs created in conjunction therewith) constituted a trustee-to-trustee transfer (or transfers) as asserted. Finally, it assumes that each of the Charities referenced herein (Charity E, Charity F, and Charity G) received its share of IRA X (IRA Y) no later than September 30, 2004 as asserted.

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 thereto.

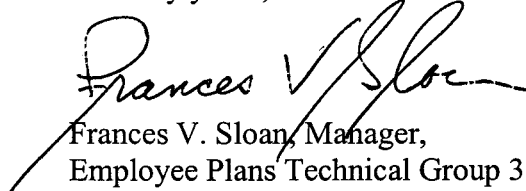
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

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If you wish to inquire about this ruling, please contact  
Esquire (ID: [REDACTED]) at either [REDACTED] (Phone) or [REDACTED]  
[REDACTED] (FAX). Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

  
Frances V. Sloan, Manager,  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose