



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

200620025

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

FEB 21 2006

UICs: 691.00-00
691.01-00
401.06-00
401.06-02

SE:T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Bank N:

Court T:

State W:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Trust T:

IRA X:

IRA Y:

Dear :

This is in response to the request for letter ruling submitted by your authorized representative on your behalf, as supplemented by correspondence dated

200620025

, , , and , in which your authorized representative requests letter rulings under sections 401(a)(9) and 691(a)(2) of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request.

Taxpayer A died on Date 1, at age 69 prior to attaining his required beginning date as that term is defined in Code section 401(a)(9)(C). Taxpayer B is one of his four surviving sons. At his death, Taxpayer A owned an individual retirement account (IRA X) with Bank N of which his four sons were equal named beneficiaries pursuant to a beneficiary designation dated Date 2, . Taxpayer B is disabled, and his mother, Taxpayer C, is his legal guardian ("Guardian"). Taxpayer B is eligible to receive Medicaid and other public benefits, and it is represented that such eligibility could lapse if he directly owned a portion of IRA X.

The IRA X custodian set aside the shares of Taxpayer B's three brothers in separate sub-IRAs (separate accounts) for their benefit on or about Date 4, . The shares of Taxpayer B's three brothers were not distributed as part of said set aside. Taxpayer B's share has not been distributed from IRA X except for required minimum distribution(s) (RMD(s)) made to the Guardian since calendar year on his behalf. It has been represented that the subdivision of IRA X into three separate IRAs (shares) for Taxpayer B's three brothers (with Taxpayer B's share remaining in IRA X) was done on an equal, pro rata, basis.

A State W court, Court T, a court of competent jurisdiction, acting on a petition by the Guardian, issued an order dated Date 3, , authorizing the creation of a trust for the Taxpayer's benefit, intended to qualify as a "special needs trust" ("Trust T") under state and federal law. It is represented that if Trust T qualifies as a "special needs trust," the trust assets will not be considered as assets of Taxpayer B in determining his eligibility to receive public benefits.

The terms of Trust T provide that the Guardian is the trustee and Taxpayer B is the sole beneficiary of Trust T during his lifetime. The Guardian may distribute to or apply for the benefit of Taxpayer B so much of the net income and principal of Trust T as appears advisable in her sole discretion. The Guardian may accumulate any or all of Trust T income; income not distributed in the current year shall be added to principal. Upon Taxpayer B's death, the balance of Trust T shall be distributed to the State W Department of Children and Families to the extent necessary to satisfy the total medical assistance paid for Taxpayer B's benefit by that department during his life. The remaining balance shall be distributed to Taxpayer B's heirs at law under the State W law of intestacy (in a manner and proportion provided in Trust T). The Guardian has disclaimed her contingent remainder interest (as one of Taxpayer B's heirs at law) in Trust T by means of a disclaimer dated Date 5, . For purposes of this letter ruling, the Service will assume that said disclaimer falls within Code section 2518.

200620025

The Guardian proposes to transfer, with state court approval, Taxpayer B's share, as $\frac{1}{4}$ beneficiary thereof, of IRA X to an IRA benefiting Trust T and the beneficiary(ies) thereof. It has been represented that, pursuant to said transfer, IRA X shall be re-titled IRA Y.

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

1. That the transfer of IRA X (as described above) to Trust T will be disregarded for Federal income purposes, and will not be considered a transfer under Code section 691(a)(2); and
2. the trustee of Trust T, Guardian, may calculate the annual distributions required under Code section 401(a)(9) (made applicable to IRAs X and Y pursuant to Code section 408(a)(6)), to be made to Trust T from IRA Y using Taxpayer B's life expectancy.

With respect to your first letter ruling request, section 691(a)(1) of the Code provides that the amount of all items of gross income in respect of a decedent (IRD) which are not properly includible in respect of the taxable period in which falls the date of the decedent's death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received, of: (A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent; (B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or (C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

Section 691(a)(2) provides that if a right, described in § 691(a)(1), to receive an amount is transferred by the estate of the decedent or a person who received such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of such right at the time of such transfer plus the amount by which any consideration for the transfer exceeds such fair market value. For purposes of this paragraph, the term "transfer" includes sale, exchange, or other disposition, or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a transfer to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

200620025

Revenue Ruling 92-47, 1992-1 C.B. 198, holds that a distribution to the beneficiary of a decedent's IRA that equals the amount of the balance in the IRA at the decedent's death, less any nondeductible contributions, is IRD under Code section 691(a)(1) that is includable in the gross income of the beneficiary for the taxable year the distribution is received.

Section 671 provides that where it is specified in subpart E of Part I of subchapter J that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under chapter 1 in computing taxable income or credits against the tax of an individual.

Section 677(a) provides that the grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under Code section 674, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be (1) distributed to the grantor or the grantor's spouse; (2) held or accumulated for future distribution to the grantor or the grantor's spouse; or (3) applied to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse.

Rev. Rul. 85-13, 1985-1 C.B. 184, concludes that if a grantor is treated as the owner of a trust, the grantor is considered to be the owner of the trust assets for federal income tax purposes. Therefore, a transfer of the grantor's assets to the trust is not recognized as a sale or disposition for federal income tax purposes.

Based solely on the facts and representations submitted, we conclude, with respect to your first ruling request, that Trust T is currently a grantor trust all of which is treated as owned by Taxpayer B under §§ 671 and 677(a). Therefore, the transfer of Taxpayer B's share of IRA X to Trust T is not a sale or disposition of said share of the IRA for federal income tax purposes and is not a transfer for purposes of § 691(a)(2).

With respect to your second ruling request, 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 beginning date, over the life of such employee or over the lives of such employee and a designated

200620025

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.

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 the trust is maintained.

Code § 401(a)(9)(B)(ii) provides, in general, that if a plan participant (IRA holder) dies before the distribution of his interest has begun in accordance with subparagraph (A)(ii) (prior to his required beginning date), then his entire interest must be distributed within 5 years of his death.

Code § 401(a)(9)(B)(iii) provides, in general, that if any portion of the interest of a deceased plan participant (IRA holder) 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).

Code § 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 attains age 70 1/2.

Code section 401(a)(9)(E) defines "designated beneficiary" as any individual designated as a beneficiary by the employee (IRA holder).

With further respect to your second ruling request, "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. For determining required distributions for calendar year , taxpayers may rely on the 1987 proposed regulations, the 2001 proposed regulations, or the "Final" Regulations..

In addition, the "Final" Regulations have been modified in part (See 2004-26 I.R.B. 1082, 1098 (June 28, 2004)). The modification to the "Final" Regulations may also be relied upon with respect to required distributions for the calendar year.

200620025

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. This rule also applies if another individual is a designated beneficiary in addition to the employee's (IRA holder's) surviving spouse.

Section 1.401(a)(9)-3 of the "Final" regulations, Q&A-4(a), provides, in relevant part, that in the absence of a plan provision to the contrary, with respect to an individual who dies prior to reaching his required beginning date, if said individual has designated a beneficiary, distributions from his plan or IRA are to be made in accordance with the life expectancy rule of Code sections 401(a)(9)(B)(iii) and (iv).

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-1, provides, in relevant part, that a designated beneficiary is an individual who is designated as a beneficiary under a plan either by the terms of the plan or by an affirmative election by the employee. Q&A-1 further provides that a person who takes under a will or otherwise under applicable state law will not be a designated beneficiary unless that individual also takes under a plan.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-7(a) provides, in summary, 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 for determining the designated beneficiary, the named 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-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 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. Q&A-4 further provides, that "consequently, any person who was a beneficiary as of the date of the employee's (IRA holder's) death, but is not a beneficiary as of that 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 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 section 2518 by that September 30 thereby allowing other beneficiaries to receive the benefit in lieu of that person, the disclaiming person is not taken into account in determining the person's designated beneficiary".

Section 1.401(a)(9)-8 of the "Final" regulations, Qs&As-2 and 3 provide the rules that apply if the IRA of a deceased IRA holder is divided into separate accounts for purposes of Code section 401(a)(9).

Section 1.401(a)(9)-8 of the "Final" regulations, Q&A-2(a)(2), provides that if an employee's (IRA holder's) benefit in a defined contribution plan is divided into separate accounts and the beneficiaries with respect to one separate account differ from the beneficiaries with respect to the other separate accounts of the employee under the plan, for years subsequent to the calendar year containing the date as of which the separate accounts were established, or date of death if later, such separate account under the plan is not aggregated with the other separate accounts under the plan in order to determine whether the distributions from such separate account under the plan satisfy section 401(a)(9). However, the applicable distribution period for each such separate account is determined disregarding the other beneficiaries only if the separate account is established on a date no later than the last day of the year following the calendar year of the employee's (IRA holder's) death.

Section 1.401(a)(9)-8 of the "Final" regulations, Q&A-3, defines separate accounts for purposes of Code section 401(a)(9), as separate portions of an employee's benefit reflecting the separate interests of the employee's beneficiaries under the plan as of the date of the employee's death for which separate accounting is maintained. The separate accounting must allocate all post-death investments, gains and losses, contributions, and forfeitures for the period prior to the establishment of the separate accounts on a pro rata basis in a reasonable and consistent manner among the separate accounts.

200620025

Section 1.401(a)(9)-9, of the "Final" Regulations, Q&A-1, sets forth the "Single Life Table" used to compute the life expectancy of an individual.

As previously noted, taxpayers must compute minimum required distributions for calendar years beginning with calendar year _____ in accordance with the "Final" regulations referenced above.

With respect to your second ruling request, based on the facts contained herein, the Service believes that the "separate account" requirements of section 1.401(a)(9)-8 of the "Final" regulations, Qs&As-2, have been met for years subsequent to calendar year _____. Additionally, based on the facts contained herein, the representation that Trust T is intended to qualify as a "special needs trust" under state and federal law to preserve Taxpayer B's eligibility to receive public benefits, and with reference to the conclusion reached on the first ruling regarding the status of Trust T as a grantor trust, the Service believes that it is appropriate to calculate the annual distributions required under Code section 401(a)(9) (made applicable to IRAs X and Y pursuant to Code section 408(a)(6), made to Trust T from IRA Y by using Taxpayer B's life expectancy.

Our conclusion to this second ruling request does not change even after Taxpayer B's share of Taxpayer A's IRA X is transferred, by means of a trustee to trustee transfer, to IRA Y, an IRA set up and maintained in the name of Taxpayer A to benefit Taxpayer B through Trust T.

Thus, with respect to your second ruling request, the Service concludes as follows:

the trustee of Trust T, Guardian, may calculate the annual distributions required under Code section 401(a)(9) (made applicable to IRAs X and Y pursuant to Code section 408(a)(6)), to be made to Trust T from IRA Y by using Taxpayer B's life expectancy.

This ruling letter is based on the assumption that IRA X either has met, is meeting, or will meet the requirements of Code § 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 W as represented. Finally, it assumes that the disclaimer referenced herein met the requirements of Code section 2518.

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.

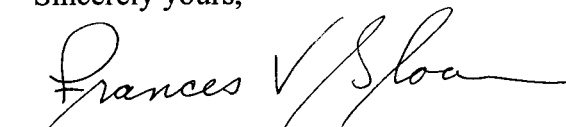
200620025

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.

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

If you wish to inquire about this ruling, please contact _____, Esquire (ID: - _____) at either _____ (Phone) or _____ (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