



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Uniform Issue List: 408.08-00

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T:EP:RA:T3

Legend:

Trust A =  
Trust Agreement A =  
Individual A =  
Individual B =  
State C =  
Company M =  
Individual D =

Dear :

This is in response to a request for a letter ruling, submitted on behalf of Trust A by its authorized representative in correspondence dated May 31, 2007, as supplemented by correspondence dated August 22 and September 25, 2007, under section 408(d) of the Internal Revenue Code (Code).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Individual A, whose date of birth was February 3, , died on June 3, at age 81. At his death, Individual A was a resident of State C. Individual A's spouse predeceased him on December 24, . Individual A was survived by four sons, including Individual B and Individual D, all of whom were alive as of the date of this ruling.

Pursuant to Trust Agreement A, Individual A established Trust A effective May 5, . Pursuant to Article Thirtieth of Trust Agreement A, Trust A became irrevocable at the

death of Individual A. Individual B is the trustee of Trust A. Individual A's four sons are the beneficiaries of Trust A. Trust A is valid under the laws of State C.

Article Ninth A of Trust Agreement A provides that the first settlor to die is referred to as the deceased spouse and the other settlor is referred to as the surviving spouse.

Article Ninth A.3 of Trust Agreement A provides, in relevant part, that on the death of either Individual A or his spouse, the trustee shall divide all of the rest of the trust estate into three separate trusts, designated the "Survivor's Trust", the "Marital Deduction Trust", and the "Residual Trust". At the time of the death of Individual A's spouse, the Marital Deduction Trust and the Residual Trust were fully funded.

Article Twelfth E.2.c of Trust Agreement A provides that if Individual A's spouse dies first, on the death of Individual A, certain property remaining in the Survivor's Trust shall be added to the Individual A's Issues' Trust, to be held, administered, and distributed as a part thereof. Individual A's Issues' Trust was used as a way of identifying the beneficiaries of the Survivor's Trust but was never funded.

Article Fourteenth A of Trust Agreement A provides that upon the death of the surviving spouse, the trustee shall divide the Trust A Issues' Trust assets into equal shares for each then living child of the surviving spouse.

As of his death, Individual A owned and maintained an Individual Retirement Arrangement (IRA) with Company M. It is represented that this IRA met the requirements of section 408(a) of the Code. By means of a beneficiary designation dated January 26, , Trust A was named the sole beneficiary of Individual A's IRA. Company M, as the custodian of the IRA, has been provided with information concerning the terms of Trust Agreement A and the identities of the beneficiaries thereof prior to October 31, .

For accounting purposes, Individual B, as trustee of Trust A, divided the IRA into four equal portions in the names of "Individual A, deceased, Trust A, Non-Spouse beneficiary, for further benefit (name of Trust A beneficiary)". These accounting designations were established using Trust A's tax identification number. Required minimum distributions are made each year based on the life expectancy of the eldest beneficiary of Trust A, Individual D.

Pursuant to the terms of Trust Agreement A, Individual B, as trustee of Trust A, wishes to terminate Trust A and proposes to transfer the IRA into four separate IRAs by means of trustee-to-trustee transfers. Each transferee IRA will be retitled as "Individual A (deceased) for the benefit of (name of each Trust A beneficiary)", using each beneficiary's tax identification number. One transferee IRA will be maintained for the benefit of Individual B, beneficiary thereof as a result of being named such under Trust Agreement A. Distributions from each of these transferee IRAs will be made over the life expectancy of the eldest of the four beneficiaries of the IRAs, Individual D. The language of Trust Agreement A contains no conditions limiting the payment of the IRA assets to the four sons.

Based on these facts and representations, the following rulings are requested:

1. Individual A's IRA may be subdivided, by means of a trustee-to-trustee transfer, so that a separate IRA may be created in the name of Individual A (deceased) for the benefit of Individual B under Individual B's taxpayer identification number, and the creation of the separate IRA will not result in a taxable distribution to Individual B.
2. Individual B, as a beneficiary of the Trust A Survivor's Trust and the beneficiary of 25 percent of Individual A's IRA, may use the life expectancy of the eldest beneficiary of the Trust A Survivor's Trust, Individual D, computed using the Single Life Expectancy Table provided at section 1.401(a)(9)-9, Question & Answer-1 of the Income Tax Regulations (regulations), for computing the required distribution with respect to his interest in Individual A's IRA with respect to calendar year . Said life expectancy is reduced by one for each calendar year that elapses after .

With respect to your ruling requests, section 408(a)(6) of the Code 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.

Section 401(a)(9)(A) of the Code 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) 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 ½.

Section 401(a)(9)(B)(i) of the Code 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), the remaining portion of his interest must be distributed at least as rapidly as under the method of distribution being used under subparagraph (A)(ii) as of the date of death.

Final regulations under section 401(a)(9) and 408(a)(6) of the Code 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 regulations, in relevant part, provides 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 regulations, Q & A-4, provides, in pertinent part, that in order to be a designated beneficiary, an individual must be a beneficiary as of the date of the IRA holder's death.

Section 1.401(a)(9)-4, Q & A-3 of the regulations provides that only individuals may be designated beneficiaries for purposes of section 401(a)(9) of the Code. A person who is

not an individual, such as an employee's estate, may not be a designated beneficiary. Further, section 1.401(a)(9)-4, Q & A-5(a) provides, in pertinent part, that a trust is not a designated beneficiary even if the trust is named as a beneficiary. Consequently, Trust A is not a designated beneficiary of Individual A's IRA even though Trust A was named by Individual A as the beneficiary of his IRA.

However, section 1.401(a)(9)-4, Q & A-5(a) of the regulations further provides that if the requirements of paragraph (b) of Q & A-5 are met, and the required documentation as described in Q & A-6(b) is provided to the plan administrator by the trustee of the trust, the beneficiaries of the trust will be treated as having been designated as beneficiaries of the employee under the plan for purposes of Code section 401(a)(9). If these requirements are met, the trust is a "see-through" trust and is a named beneficiary of the IRA as of the date of the IRA owner's death, and the beneficiaries of the trust, with respect to the trust's interest in the IRA, may be considered designated beneficiaries for purposes of determining the distribution period for payment of benefits from the IRA under section 401(a)(9) of the Code. Section 1.401(a)(9)-4, Q & A-5 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, Q & A-6(b) of the regulations 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, Q & A-5(a) of the regulations 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 section 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, Q & A-5(c)(1) of the regulations 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, Q & A-7 of the regulations 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 section 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, Q & A-1 of the regulations provides the relevant Single Life Expectancy Table.

Section 1.401(a)(9)-8, Q & A-2(a) of the regulations 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 section 401(a)(9) of the Code. Instead, the rules in section 401(a)(9) apply separately to each separate account under the plan.

Section 1.401(a)(9)-8, Q & A-3 of the regulations provides that a separate account is a separate portion of an employee's benefit reflecting the separate interest 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 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, Q & A-5(c) of the regulations 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.

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

Section 408(d)(3)(C) of the Code provides, in general, 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, Individual B is Individual A's son.

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.

Revenue Ruling 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 transfer need not be the surviving spouse of a deceased IRA holder.

The issues raised in this ruling request are whether a beneficiary-son of an IRA holder may, after the death of the IRA holder, transfer his 25 percent interest in the deceased's IRA to an IRA set up to solely benefit him, the taxability of such transfer, and whether he may receive distributions from his beneficiary IRA over the eldest beneficiary's life expectancy.

Although neither the Code nor the regulations promulgated under section 401(a)(9) of the Code preclude the posthumous division of the Company M IRA into more than one IRA, the regulations do preclude separate account treatment for Code section 401(a)(9) purposes where amounts pass through a trust.

Additionally, a trustee-to-trustee transfer, as described in Revenue Ruling 78-406, does not constitute a distribution or payment as those terms are defined for purposes of section 408(d) of the Code. Thus, such a transfer may be accomplished by the beneficiary of an IRA of a deceased individual. Furthermore, a trustee-to-trustee transfer from one IRA to another may be accomplished after the date of death of an IRA owner by a beneficiary of said IRA owner as long as the transferee IRA account remains in the name of the decedent for the benefit of the beneficiary.

In this case, Trust A was the named beneficiary of Individual A's IRA maintained with Company M. Trust A was established by Individual A, was valid under the laws of State C, and became irrevocable at the death of Individual A. In addition, relevant documentation relating to Trust A's status as beneficiary of Individual A's interest in the IRA maintained by Company M was given to the IRA administrators by the date required under the regulations. Furthermore, the Service notes that the identity of each person entitled to receive any portion of Individual A's interest in the IRA upon his death is determinable by perusing the provisions of Trust Agreement A. The beneficiaries of Trust A were Individual B and his three brothers, who were all sons of Individual A.

Individual B intends to accomplish a trustee-to-trustee transfer of his interest in Individual A's IRA. Such transfer will be into an IRA established and maintained in the name of Individual A to benefit Individual B.

The regulations cited above provide that only individuals may qualify as designated beneficiaries for purposes of section 401(a)(9) of the Code; thus, trusts were ineligible to qualify as such. Of the Trust A beneficiaries, one of the sons other than Individual B, Individual D, has the shortest life expectancy.

As noted above, the separate account rules of section 1.401(a)(9)-8, Q & A-2(a) of the regulations do not apply to amounts passing through a trust. Thus, the required minimum distributions from any IRA created by a trustee-to-trustee transfer from Trust A on behalf of Individual B, irrespective of his age, must be based on the life expectancy of

the eldest beneficiary-son, Individual D. In this case, the Table to be used to determine required minimum distributions is found at section 1.401(a)(9)-9, Q & A-1 of the regulations. Furthermore, the applicable distribution period must be computed in accordance with section 1.401(a)(9)-5, Q & A-5(c)(1) of the regulations.

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

1. Individual A's IRA may be subdivided, by means of a trustee-to-trustee transfer, so that a separate IRA may be created in the name of Individual A (deceased) for the benefit of Individual B and the creation of the separate IRA will not result in a taxable distribution to Individual B.
2. Individual B, as a beneficiary of 25 percent of the Trust A Survivor's Trust which includes the assets of Individual A's IRA, may use the life expectancy of the eldest beneficiary of the Trust A Survivor's Trust, Individual D, computed using the Single Life Expectancy Table provided at section 1.401(a)(9)-9, Question & Answer-1 of the regulations, for computing the required distribution with respect to his interest in Individual A's IRA with respect to calendar year . Said life expectancy is reduced by one for each calendar year that elapses after .

Concerning the use of Individual B's taxpayer identification number, the following general information might be helpful. Revenue Procedure 89-52, 1989-2 C.B. 632 provides advice to IRA trustees of the Form 5498 reporting requirements that must be satisfied when the initial holder of an IRA dies. The revenue procedure sets forth, for income tax purposes, the requirements for reporting the ownership and value of the IRA with respect to the decedent in the year of death, and with respect to any beneficiaries in the year of death and future years. In specific part, the revenue procedure provides that an IRA received by a non-spouse beneficiary upon the death of an IRA owner must be kept separate from any IRA established by the non-spouse as an original owner. As a result of this, an IRA holder must be able to identify the source of each IRA he or she holds. In completing a Form 5498, the IRA trustee must therefore state the name of the present holder of the IRA and also continue to identify the prior owner, for example, "Individual X as beneficiary of Individual Y". The trustee must use the beneficiary's taxpayer identification number in completing the Form 5498 reporting the portion of the IRA belonging to that beneficiary.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter assumes that Individual A's IRA is and was qualified under section 408 of the Code at all times relevant thereto. It also assumes that the transferee IRA to be set up by Individual B will also meet the requirements of section 408 at all times relevant 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.