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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Uniform Issue List: 401.06-00

JUN 19 2008

T:EP:RA:T3

Legend:

Individual A =
Individual B =
Individual C =
State D =

Dear :

This is in response to a request for a letter ruling, submitted on behalf of Individual B by his authorized representative in correspondence dated April 9, 2007, as supplemented by correspondence dated July 25, 2007 and January 25, 2008, under sections 2518 and 401(a)(9) 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 was married and had two sons, Individual B and Individual C, born March 16, and April 14, respectively. On or about March 20, Individual A opened an Individual Retirement Arrangement (IRA) and executed an IRA beneficiary designation form. The IRA beneficiary designation form named her husband as the primary beneficiary and her son, Individual B, as the contingent beneficiary.

In 2002, Individual A and her husband divorced and Individual A executed a new will. Individual A's will leaves her tangible personal property to her sons outright and the residue of her estate to her sons in trust. The will provides that if the trust's assets consist of an interest in an IRA, distributions from the IRA are to be made to two separate trust shares, one for Individual B and one for Individual C. The remaining trust assets are to be held in one trust share until Individual C turns 18, at which point that trust share is to be divided into two equal shares, one for Individual B and one for Individual C. Each trust share will terminate when the son for whom it was established turns 35. The trustee, who is Individual A's brother, has the discretion to distribute trust assets to the sons.

Shortly after Individual A executed her will, she was directed by her estate planning attorney to change her IRA beneficiary designation form to provide that the trust is the beneficiary of the IRA. Individual A, whose date of birth was July 17, , died on November 9, at age 60. On the date of her death, Individual A was a resident of State D. After her death, it was discovered that she had not changed the IRA beneficiary designation form as directed. State D law prohibits Individual A's ex-husband from benefiting from her IRA and, therefore, Individual B is the sole beneficiary of the IRA. When Individual A died, Individual B was 20 years old and Individual C was 17 years old. Individuals B and C are alive as of the date of this ruling.

On July 23, , Individual B executed a disclaimer in which he disclaimed any and all interest in one-half of the IRA, including any interest in the IRA that passes to the trust established under Individual A's will, and any right to inherit the disclaimed IRA property by reason of gift over, successive gift over, or right of intestate succession under State D law. Individual B affirmed in the disclaimer that he had not accepted any interest in or benefit from the IRA and that he had not and will not receive any consideration in money or money's worth for making the disclaimer. The executor of Individual A's estate acknowledged receipt of the disclaimer on July 24, .

As a result of the disclaimer, Individual B's disclaimed one-half interest in the IRA will pass to the trust established under Individual A's will, and will become part of the assets further divisible into two equal, separate shares for Individuals B and C. Since Individual B has also disclaimed any and all interests he might otherwise receive in the disclaimed one-half of the IRA, that one-half of the IRA will be held in the separate share trust for the sole benefit of Individual C. The trustee, in the administration of the IRA, shall comply with Code section 408 and the regulations promulgated thereunder, including the required minimum distribution rules.

It has been represented that the trust is currently in the process of being funded and that no distributions have been made from the trust. It has been further represented that no actions have been taken respecting the IRA and no distributions have been made from the IRA.

Based on the facts and representations, the following rulings were requested:

1. The disclaimer executed by Individual B is a qualified disclaimer within the meaning of section 2518 of the Code and the disclaimed IRA property can pass into a separate trust share established for Individual C under the trust.
2. Because the disclaimer is a qualified disclaimer within the meaning of section 2518 of the Code, pursuant to section 20.2046-1(a) of the Estate Tax Regulations and section 25.2518-1(b) of the Gift Tax Regulations, the disclaimer will not result in any gift, estate, or generation-skipping transfer tax for Individual B.
3. Code section 401(a)(9) minimum required distributions from the portion of Individual A's IRA that benefits Individual B may be calculated based upon the life expectancy of Individual B using the Single Life Table found in the final Income Tax Regulations (regulations).

4. For income tax purposes, Individual B will be taxed on the required minimum distributions made specifically to him, and Individual B will not be deemed to have assigned any income to Individual C.

With respect to your ruling requests, section 2046 of the Code provides that for provisions relating to the effect of a qualified disclaimer for purposes of chapter 11, see section 2518.

Section 20.2046-1(a) of the Estate Tax Regulations provides, in pertinent part, that if a qualified disclaimer is made with respect to a transfer, the Federal estate tax provisions are to apply with respect to the property interest disclaimed as if the interest had never been transferred to the person making the disclaimer. See section 2518 of the Code and the corresponding regulations for rules relating to a qualified disclaimer.

Section 2518(a) of the Code provides, in general, that if a person makes a qualified disclaimer with respect to any interest in property, the interest will be deemed to have never been transferred to that person.

Section 2518(b) of the Code defines the term "qualified disclaimer" to mean an irrevocable and unqualified refusal by a person to accept an interest in property but only if--(1) such refusal is in writing, (2) such writing is received by the transferor of the interest, his legal representative, or the holder of the legal title to the property to which the interest relates not later than the date which is 9 months after the later of--(A) the day on which the transfer creating the interest in such person is made, or (B) the day on which such person attains age 21, (3) such person has not accepted the interest or any of its benefits, and (4) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either--(A) to the spouse of the decedent, or (B) to a person other than the person making the disclaimer.

Section 2518(c)(1) of the Code provides that a disclaimer with respect to an undivided portion of an interest which meets the requirements of section 2518(a) is treated as a qualified disclaimer of such portion of the interest.

Section 25.2518-1(b) of the Gift Tax Regulations provides that if a person makes a qualified disclaimer as described in section 2518(b) of the Code and section 25.2518-2, for purposes of the Federal estate, gift, and generation-skipping transfer tax provisions, the disclaimed interest in property is treated as if it had never been transferred to the person making the qualified disclaimer. Instead, it is considered as passing directly from the transferor of the property to the person entitled to receive the property as a result of the disclaimer. Accordingly, a person making a qualified disclaimer is not treated as making a gift. Similarly, the value of a decedent's gross estate for purposes of the Federal estate tax does not include the value of property with respect to which the decedent, or the decedent's executor or administrator on behalf of the decedent, has made a qualified disclaimer.

Section 25.2518-3(a)(1)(i) of the Gift Tax Regulations provides, in pertinent part, that if the requirements of Code section 2518 are met, the disclaimer of all or an undivided portion of any separate interest in property may be a qualified disclaimer even if the disclaimant has another interest in the same property.

Section 25.2518-3(a)(1)(ii) of the Gift Tax Regulations provides, in pertinent part, that a disclaimant shall be treated as making a qualified disclaimer of a separate interest in property if the disclaimer relates to severable property and the disclaimant makes a disclaimer which would be a qualified disclaimer if such property were the only property in which the disclaimant had an interest. Severable property is property which can be divided into separate parts each of which, after severance, maintains a complete and independent existence.

Section 25.2518-3(a)(2) of the Gift Tax Regulations provides that a disclaimer is not a qualified disclaimer under section 2518 of the Code if the beneficiary disclaims income derived from specific property transferred in trust while continuing to accept income derived from the remaining properties in the same trust unless the disclaimer results in such property being removed from the trust and passing, without any direction on the part of the disclaimant, to persons other than the disclaimant or to the spouse of the decedent. Moreover, a disclaimer of both an income interest and a remainder interest in specific trust assets is not a qualified disclaimer if the beneficiary retains interests in other trust property unless, as a result of the disclaimer, such assets are removed from the trust and pass, without any direction on the part of the disclaimant, to persons other than the disclaimant or to the spouse of the decedent.

Section 25.2518-3(b) of the Gift Tax Regulations provides, in pertinent part, that a disclaimer of an undivided portion of a separate interest in property which meets the other requirements of a qualified disclaimer under Code section 2518(b) and the corresponding regulations is a qualified disclaimer. An undivided portion of a disclaimant's separate interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the disclaimant in such property and must extend over the entire term of the disclaimant's interest in such property and in other property into which such property is converted. A disclaimer of some specific rights while retaining other rights with respect to an interest in the property is not a qualified disclaimer of an undivided portion of the disclaimant's interest in property.

Section 25.2518-3(d) of the Gift Tax Regulations, Example (5), provides as follows: E died on September 13, 1978. Under the provisions of E's will, E's share of stock in X, Y, and Z corporations were to be transferred to a trust. The trust provides that all income is to be distributed currently to F and G in equal parts until F attains the age of 45 years. At that time, the corpus of the trust is to be divided equally between F and G. F disclaimed the income arising from the shares of X stock. G disclaimed 20 percent of G's interest in the trust. F's disclaimer is not a qualified disclaimer because the X stock remains in the trust. If the remaining requirements of section 2518(b) are met, G's disclaimer is a qualified disclaimer.

Section 25.2518-3(d) of the Gift Tax Regulations, Example (6), provides as follows: Assume the same facts as in section 25.2518-3(d), Example (5), except that F disclaimed both the income interest and the remainder interest in the shares of X stock. F's disclaimer results in the X stock being transferred out of the trust to G without any direction on F's part. F's disclaimer is a qualified disclaimer under section 2518(b) of the Code.

In this case, it has been represented that distributions have not been made from the trust, no action has been taken respecting the IRA, and distributions have not been made from the IRA. The trust's terms provide that any IRA distributions made to the

trust are to be made to two separate trust shares, one for Individual B and one for Individual C. The trust's terms also provide that when Individual C reaches age 18, trust assets other than IRA distributions will be divided into two separate trust shares, one for Individual B and one for Individual C.

In the disclaimer document, Individual B made two distinct disclaimers. Individual B disclaimed one-half of his interest in the IRA, and any interest he had in the disclaimed IRA property that would pass to him by virtue of Individual A's will or under the intestacy laws. A disclaimer of one-half of an interest in an IRA is a disclaimer of an undivided portion of a separate interest in property. The disclaimer is in writing and was executed and delivered to the executor of Individual A's estate within 9 months of the date Individual A died and within 9 months of Individual B's 21st birthday.

Therefore, based upon the facts submitted and the representations made, with respect to ruling requests one and two, we conclude as follows:

1. The disclaimer executed by Individual B is a qualified disclaimer within the meaning of section 2518 of the Code and the disclaimed IRA property can pass into a separate trust share established for Individual C under the trust.
2. Because the disclaimer is a qualified disclaimer within the meaning of section 2518 of the Code, pursuant to section 20.2046-1(a) of the Estate Tax Regulations and section 25.2518-1(b) of the Gift Tax Regulations, the disclaimer will not result in any gift, estate, or generation-skipping transfer tax for Individual B.

With respect to ruling requests three and four, 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.

In general, for purposes of Code section 408(d), the term "payee" or "distributee" means the person or entity entitled to receive the amount(s) distributed.

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)(ii) of the Code 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), his entire interest must be distributed within five years after the death of such plan participant.

Section 401(a)(9)(B)(iii) provides an exception to the five-year rule for certain amounts payable over the life of the beneficiary. If--(I) any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary, (II) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and (III) such distributions begin not later than one year after the date of the employee's death or such later date as the Secretary may by regulations prescribe, for purposes of section 401(a)(9)(B)(ii), the portion referred to in 401(a)(9)(B)(iii)(I) shall be treated as distributed on the date on which such distributions began.

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

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, Question & Answer-3 of the regulations provides that only individuals may be designated beneficiaries for purposes of section 401(a)(9) of the Code. A person that is not an individual, such as an employee's estate, may not be a designated beneficiary. If a person other than an individual is designated as a beneficiary of an employee's benefit, the employee will be treated as having no designated beneficiary for purposes of section 401(a)(9), even if there are also individuals designated as beneficiaries.

Section 1.401(a)(9)-4, Q & A-4(a) of the regulations provides 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. Consequently, in general, 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, 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 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 employee's designated beneficiary.

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 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)-9, Q & A-1 of the regulations provides the relevant Single Life Expectancy Table.

The issues raised in ruling requests three and four concern the effects of the qualified disclaimer in determining the taxability of any eventual distributions from Individual A's IRA and the applicable distribution period to be used by Individual B to receive distributions from this IRA.

Since Individual A died before the distribution of her IRA began, Code section 401(a)(9)(B)(ii) requires the distribution of her entire interest in the IRA within five years after her death. However, as the person designated by Individual A to receive her IRA (a portion of her IRA as a result of the disclaimer referenced above), and, as such, a designated beneficiary within the meaning of section 401(a)(9)(E), Individual B is eligible to take advantage of the exception to the five-year rule and may receive distributions over his life or over a period not extending beyond his life expectancy under the rules of section 401(a)(9)(B)(iii).

Based on the above, concerning Individual B only, the minimum distribution requirements under section 401(a)(9) of the Code concerning Individual A's IRA may be met by distributing amounts annually from the IRA, computed using the remaining life expectancy of Individual B, utilizing the Single Life Expectancy Table provided at section 1.401(a)(9)-9, Q & A-1 of the regulations, beginning with the calendar year . For each year after calendar year , the life expectancy for is reduced by one in accordance with section 1.401(a)(9)-5, Q & A-5(c)(1) of the regulations.

Additionally, for purposes of Code section 408(d), Individual B is entitled to receive distributions only from the portion of Individual A's IRA that he did not disclaim. Thus, he is the "payee" or "distributee" with respect to that portion only.

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

3. Code section 401(a)(9) minimum required distributions from the portion of Individual A's IRA that benefits Individual B may be calculated based upon the life expectancy of Individual B using the Single Life Table found in the final regulations.

4. For income tax purposes, pursuant to Code section 408(d)(1), Individual B will be taxed on the distributions (including, but not limited to required minimum distributions) made specifically to him from that portion of Individual A's IRA that he did not disclaim, and Individual B will not be deemed to have assigned any income to Individual C.

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.

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.

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative. If you wish to inquire about this ruling, please contact _____, I.D. # - _____, at _____. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,


_____, Manager
Employee Plans Technical Group 3

Enclosures:

- Deleted copy of letter ruling
- Notice of Intention to Disclose