



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

200849020

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 08 2008

UIL: 9999.98-00

LEGEND:

Taxpayer A:

Taxpayer D:

Court C:

Case D:

County V:

State W:

State Y:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Trust T:

Company U:

IRA X:

T:EP:RA

Amount 1:

Dear :

This is in response to the January 31, 2006 correspondence submitted by your authorized representative on your behalf, as supplemented by correspondence dated May 4, 2007, December 6, 2007, January 4, 2008, May 14, 2008 and June 13, 2008 in which your authorized representative requests a series of letter rulings under sections 401(a)(9) and 408(a)(6) of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 1, 1939, died on Date 2, 2004 at age 65 not having attained his "required beginning date" as that term is defined in Code section 401(a)(9)(C). At his death, Taxpayer A owned an individual retirement account (IRA X) with Company U, from which he had not commenced taking minimum required distributions. Taxpayer A was a resident of State W at the time of his death.

On Date 3, 1997, Taxpayer A executed both his Last Will and Testament and Trust T. Also dated the same date is an IRA X Account Application executed by Taxpayer A. Under Section 7 of that Application, entitled "IRA Beneficiary Designation," Taxpayer A designated as his primary beneficiary the following: "as stated in wills." No contingent or other beneficiaries are listed on the form.

Article II of Taxpayer A's Last Will and Testament provides that the Will is intended to direct the disposition of property over which Taxpayer A has the power of testamentary disposition at his death. Article IV of the Will states that Taxpayer A may leave a memorandum identifying individual bequests of automobiles, jewelry, or other personal property and further states that the Executor, Will beneficiaries, and heirs "shall be bound by the provisions of any such letter as if the provisions thereof were set out in this Will." Article V of the Will states that all remaining property (the residuary estate) is bequeathed to the Trustee of Trust T.

Article II(D) of Trust T provides that Trust T is irrevocable after the death of Taxpayer A. Article VII of Trust T describes the division of trust assets after Taxpayer A's death. Under Article VII(A), the Trustee of Trust T is directed to distribute certain State Y real estate, including the contents of the home, to another beneficiary. Under Article VII(B), the Trustee is directed to distribute to another beneficiary the proceeds of the sale of certain State W real estate. Article VII(C) provides for distribution of the remainder of the Trust assets to eight named individuals in specified percentages.

Taxpayer D is one of eight residuary beneficiaries listed under Trust T. Taxpayer D was alive as of the date of this ruling request.

On Date 4, 2005, Taxpayer A's Personal Representative initiated Case D in which she petitioned Court C, County V, State W, which is represented to be a court of competent jurisdiction, to issue an order that the phrase "as stated in wills" in the above-referenced IRA X beneficiary designation is a specification of Trust T as beneficiary of IRA X, and specifically that the eight named beneficiaries of the residual assets under Trust T be treated as the designated beneficiaries of IRA X. On Date 5, 2005, Court C issued an order adopting the request. Although the petition and order issued by Court C in Case D provide that the rules regarding designation of beneficiaries under IRAs and distributions from those IRAs are principally governed by the Code and Income Tax Regulations ("Regulations"), Court C's order is made solely under the laws of State W.

IRA X's value as of Taxpayer A's death was Amount 1.

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

1. Because the IRA X beneficiary designation, as interpreted under state law by Court C resulted in the eight individuals named in Trust T being treated as directly-named beneficiaries under IRA X's beneficiary designation, Taxpayer D qualifies as a "designated beneficiary" pursuant to Code section 401(a)(9)(E) and section 1.401(a)(9)-4, Question and Answer-3 of the Regulations.

2. That pursuant to Code Section 401(a)(9)(E), the eight individuals named in Trust T are the designated beneficiaries of IRA X.

3. That the separate account rules under section 1.401(a)(9)-8, Q&A-2 of the Regulations, are applicable for purposes of determining minimum required distributions from Taxpayer A's IRA X.

4. That as a designated beneficiary, Taxpayer D is entitled to take minimum required distributions from her respective share of the inherited IRA X under the life expectancy rule of Code section 401(a)(9)(B)(iii) based on her life expectancy without regard to the life expectancies of the other individuals mentioned in Article VII(C) of Trust T.

With respect to your letter 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 the 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 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.

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

Section 1.401(a)(9)-4 of the Regulations, Q&A-1, provides, in relevant part, that a designated beneficiary is an individual who is designated as a beneficiary under the plan. An individual may be designated as a beneficiary under the plan either by the terms of the plan or, if the plan so provides, by an affirmative election by the employee (or the employee's surviving spouse) specifying the beneficiary. Under these Regulations, a designated beneficiary need not be specified by name in the plan or by the employee to the plan in order to be a designated beneficiary so long as the individual who is to be the beneficiary is identifiable under the plan. The members of a class of beneficiaries capable of expansion or contraction will be treated as being identifiable if it is possible to identify the class member with the shortest life expectancy. Q&A-1 further provides that the passing of an employee's interest to an individual under a will or otherwise under applicable state law will not make that individual a designated beneficiary under section 401(a)(9)(E) of the Code unless that individual is designated as a beneficiary under the plan.

Section 1.401(a)(9)-4 of the Regulations, Q&A-3, provides, in relevant part, 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 the employee's estate, may not be a designated beneficiary. Under Q&A-3 of section 1.401(a)(9)-4 of the Regulations, if a person other than an individual is designated as a beneficiary, the employee will be treated as having no designated beneficiary for purposes of section 401(a)(9) of the Code. However, under section 1.401(a)(9)-4, Q&A-5, if a trust is named as beneficiary of an employee or IRA owner, the beneficiaries of the trust will be treated as having been designated as beneficiaries provided certain requirements are satisfied that are outlined in section 1.401(a)(9)-4, Q&A-5(b). Those requirements are met if (1) the trust is a valid trust under state law, or would be but for the fact that 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 section 1.401(a)(9)-4, Q&A-1, from the trust instrument, and (4) the trust documentation is provided to the plan administrator as provided in section 1.401(a)(9)-4, Q&A-6. If those requirements are met, 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).

Section 1.401(a)(9)-4 of the 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 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.

With respect to your ruling requests, Taxpayer D seeks a ruling that the language "as stated in wills" in the IRA beneficiary designation form should be treated as a designation of Trust T as the beneficiary of IRA X and the beneficiaries of the residual assets under Trust T should be treated as the "designated beneficiaries" for purposes of section 401(a)(9).

Section 1.401(a)(9)-4, Q&A-1 of the Regulations, provides that a designated beneficiary is an individual who is designated as a beneficiary under the plan. An individual may be designated as a beneficiary under the plan either by the terms of the plan or, if the plan so provides, by an affirmative election by the employee (or the employee's surviving spouse) specifying the beneficiary. Under these regulations, a designated beneficiary need not be specified by name in the plan or by the employee to the plan in order to be a designated beneficiary so long as the individual who is to be the beneficiary is identifiable under the plan. Thus, the beneficiary designation need not identify a beneficiary by name, as was the case here, as long as the beneficiary is identifiable under the plan.¹ In this case, we do not believe that the beneficiaries of the IRA are identifiable from the language on the form "as stated in wills." This language names no one and otherwise provides insufficient information to identify the IRA beneficiaries from the face of the form.

Taxpayer D argues that the language "as stated in wills" should be read as a designation of Trust T as beneficiary and, under section 1.401(a)(9)-4, Q&A-5, that the beneficiaries of Trust T are "designated beneficiaries" for purposes of section 401(a)(9). However, we believe this argument fails under the facts of this case. The beneficiary designation form makes no mention of Trust T. Thus, we

¹ Note that the regulations do not provide that the beneficiary be "reasonably identifiable" or "identifiable with reasonable certainty" or other qualifying language. Rather, the person who is beneficiary must be "identifiable," without qualification.

200849020

do not believe that Trust T can be said to be "named as a beneficiary of the employee" as required by section 1.401(a)(9)-4, Q&A-5.

As IRA X had no designated beneficiary at Taxpayer A's death on Date 2, 2004, Taxpayer A's estate was the beneficiary of Taxpayer A's IRA X at the time of his death. Except for certain exceptions not applicable here, section 1.401(a)(9)-4, Q&A-3 of the Regulations, provides that where an estate is designated beneficiary, the decedent will be treated as having no designated beneficiary. For purposes of section 401(a)(9) of the Code and the Regulations thereunder, providing the language "as stated in wills" on an IRA beneficiary designation form is substantively equivalent to specifying the estate as the beneficiary. Pursuant to section 1.401(a)(9)-4, Q&A-1, the fact that an employee's interest under the plan passes to a certain individual under a will or otherwise under applicable law does not make that individual a designated beneficiary under section 401(a)(9), unless the individual is designated as a beneficiary under the plan. Accordingly, under the foregoing rules, Taxpayer A must be treated as having no designated beneficiary as of his death for purposes of determining distributions in accordance with section 401(a)(9) and the underlying Regulations.

As discussed above we do not believe that there was a designated beneficiary of IRA X for section 401(a)(9) purposes at the time of Taxpayer A's death. However, to fully address the issues raised in the first ruling request, it is also necessary to address the Court C Order referenced herein.

Taxpayer D, through her authorized representative, asserts that the Court C Order, referenced above, naming her as a beneficiary of IRA X should be given effect for purposes of allowing her to qualify as a designated beneficiary within the meaning of section 401(a)(9)(E) of the Code. We believe that the Code and Regulations are clear as to the requirements of naming a designated beneficiary and the timing of the beneficiary designation and do not permit the exception sought here. Section 1.401(a)(9)-4, Q&A-1 of the Regulations, provides that a designated beneficiary is an individual designated as a beneficiary under the terms of the IRA or by an affirmative election of the IRA owner. Under Q&A-4 of section 1.401(a)(9)-4 of the Regulations, only individuals who are beneficiaries under the IRA on the IRA owner's death, and who remain beneficiaries as of September 30 of the following calendar year, can be treated as "designated beneficiaries" for purposes of section 401(a)(9). As described in the Preamble to these Regulations, "[t]he period between death and the beneficiary determination date is a period during which beneficiaries can be eliminated but not replaced with a beneficiary not designated under the [IRA] as of the date of death". Preamble to section 1.401(a)(9) of the Regulations, T.D. 8987 (04/16/2002) ("Determination of the Designated Beneficiary").

The Court C Order provides that under State W law the phrase "as stated in will" in the IRA Beneficiary designation is a specification of Trust T as designated beneficiary of IRA X and that the eight individuals who are beneficiaries of the residue of Trust T, including Taxpayer D, are the designated beneficiaries of Taxpayer A's IRA X. However, to accept the Court C Order for purposes of section 401(a)(9) would, in effect, create or add designated beneficiaries by treating these individuals, including Taxpayer D, as designated beneficiaries even though they were not designated as such by Taxpayer A at his death. To give such Order retroactive effect for purposes of section 401(a)(9) would be inconsistent with the requirements of section 401(a)(9) and the "Final" Regulations promulgated thereunder. As a result, the Court C Order cannot be given effect for purposes of Code section 401(a)(9), and, irrespective of said Order, we will not treat Taxpayer A as having named, or designated, Taxpayer D as a beneficiary of his IRA X.

Thus, with respect to your first ruling request, the Internal Revenue Service concludes that the language "as stated in will" did not result in the eight individuals named in Article VII(C) of Trust T being treated as directly-named beneficiaries under IRA X's beneficiary designation. Therefore, pursuant to section 401(a)(9)(E) of the Code and section 1.401(a)(9)-4, Q&A-3 of the Regulations, Taxpayer D does not qualify as a "designated beneficiary" of said IRA X. This conclusion is not changed by the Court C Order referenced above.

Our conclusion with respect to your first ruling request is dispositive of the remaining three ruling requests.

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.

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 ruling has been sent to your authorized representative in accordance with a power of attorney on file in this office.

200849020

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

Sincerely yours,



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

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose