



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201203033

*Uniform Issue List: 401.06-01*

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OCT 26 2011

SE;T;EP;RA;T3

LEGEND:

Taxpayer A:       \*\*\*  
  
Decedent B:       \*\*\*  
  
Spouse C:         \*\*\*  
  
Daughter D:       \*\*\*  
  
Son E:             \*\*\*  
  
Charity F:         \*\*\*  
  
Trust T:           \*\*\*  
  
Marital Trust M:   \*\*\*  
  
Date 1:            \*\*\*  
  
Date 2:            \*\*\*  
  
Date 3:            \*\*\*  
  
Date 4:            \*\*\*  
  
Date 5:            \*\*\*  
  
Date 6:            \*\*\*

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Date 7: \*\*\*

Date 8: \*\*\*

Date 9: \*\*\*

Year 1: \*\*\*

Year 2: \*\*\*

State S: \*\*\*

Employer X: \*\*\*

Plan Y: \*\*\*

Amount A: \*\*\*

Dear \*\*\*:

This is in response to the August 18, 2008, letter submitted on your behalf by your authorized representative, as supplemented by correspondence dated December 19, 2008, January 6, 2009, and May 24, 2011, in which you request several letter rulings under section 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.

Decedent B established Trust T, a revocable living trust, on Date 1, amending and restating the trust on Date 2. On Date 3, Decedent B died at age 62 and was survived by his wife, Spouse C, born on Date 4 and age 61, and his two children (who are not the children of Spouse C), Daughter D and Son E, born on Dates 5 and 6, respectively. At the time of his death, Decedent B was employed by Employer X and participated in Plan Y, a defined contribution plan qualified under Code section 401(a). The balance of his interest in Plan Y as of his date of death, Date 3, was Amount A.

Trust T provides for the creation of Marital Trust M, a trust for the benefit of Spouse C, to be funded by (in addition to other amounts) the value of any employee benefit plans made payable to Marital Trust M. It also provides for the creation of "Primary Trusts" and "Exemption Trusts" for each of the two children. The Exemption Trusts receive equal shares of Decedent B's remaining Generation-Skipping Transfer ("GST") exemption. The Primary Trusts receive the balance of the assets of Trust T, after all other distributions or allocations under the trust.

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Paragraph 7 of Trust T sets out the terms of Marital Trust M. Trust T provides that Spouse C is entitled to receive all net income generated by the assets of Marital Trust M. The trustee may also invade the principal of Marital Trust M to provide for the health, support, and maintenance of Spouse C. Upon Spouse C's death, any remaining property in Marital Trust M passes in this manner: (1) from Marital Trust M property includable in Spouse C's gross estate, a share equal to Spouse C's remaining GST exemption, to be divided equally between each Exemption Trust, and (2) the remaining balance, divided equally between each Primary Trust.

Paragraph 8 of Trust T sets out the terms of the Exemption Trusts. During the term of each Exemption Trust, the trustee may distribute to each child the income and principal the trustee considers necessary for the child's health, education, maintenance and support. Upon the death of each child, the child may appoint all of the remaining principal and accumulated income among Decedent B's lineal descendents. To the extent the child does not exercise this power, the remaining principal and income are to be distributed to the child's lineal descendents, per stirpes, and if there are none, to Decedent B's lineal descendents, per stirpes. Daughter D and Son E are the sole trustees of each Exemption Trust.

Paragraph 9 of Trust T sets out the terms of the Primary Trusts. During the term of each Primary Trust, the trustee shall distribute all of the net income to the child, plus whatever principal the trustee considers necessary for the child's health, education, maintenance, and support (in addition to other limited purposes, such as allowing the child to enter into a business). The child may withdraw up to one half of the principal upon reaching age 30, and the entire principal upon reaching age 35. A child who dies before receiving the entire principal may appoint any or all of the principal and income by will among one or more persons, organizations, or the child's estate; however, the child may not exercise this power of appointment over any portion of the trust in favor of the child, the child's estate, or the creditors of either unless a federal generation-skipping tax would be payable with respect to that portion if the child had no power of appointment over that portion. To the extent that the child does not exercise this appointment power, the remaining principal and income are to be distributed to the child's lineal descendents, per stirpes, and if there are none, to the Decedent's lineal descendents, per stirpes. Daughter D and Son E are the sole trustees of the Primary Trusts.

Paragraph 10 of Trust T provides that any property not effectively disposed of under the provisions of Trust T shall be distributed to Charity F, if then in existence.

Paragraph 28 of Trust T named three possible trustees as trustee of Marital Trust M. Because each named trustee declined to serve by instrument dated Date 7, the office of trustee was left vacant. Daughter D and Son E appointed Taxpayer A as trustee of Marital Trust M by instrument dated Date 7.

Paragraph 34 of Trust T provides that only Decedent B may revoke or amend Trust T, rendering Trust T irrevocable following Decedent B's death.

Taxpayer A represents that Plan Y permits a direct rollover of a distribution to a non-spousal beneficiary who is a designated beneficiary and provides that the Plan Administrator may approve non-spousal rollovers on a death claim form.

On Date 8, Decedent B executed a "Retirement Plan Beneficiary Form" with respect to his interest in Plan Y, designating as primary beneficiary the acting trustee of Marital Trust M, which was to be created upon Decedent B's death if Spouse C survived him.

On Date 9, which followed Decedent B's death but preceded September 30 of the year following Decedent B's death, Son E executed a "Partial Release of Power of Appointment" (the "Release"). The Release irrevocably released Son E's right to appoint at his death any portion of the income or principal of the Primary Trust in his name to any beneficiary who is not a natural person or who was born before Spouse C. The release was executed in accordance with the law of State S. Son E had no children as of September 30 of the year following Decedent B's death.

For Year 1 and Year 2, Taxpayer A, as trustee of Trust T, distributed the required minimum distributions for Decedent B's interest in Plan Y to Marital Trust M. The required distribution was computed using the life expectancy of Spouse C.

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

1. That each of the beneficiaries of Marital Trust M will be treated as a "designated beneficiary" within the meaning of section 401(a)(9)(E) of the Code and section 1.401(a)(9)-4, Q&A-1 and 5, of the Income Tax Regulations ("Regulations");
2. That Spouse C, having the shortest life expectancy of any beneficiary of Marital Trust M, will be the designated beneficiary for purposes of determining the applicable distribution period under section 1.401(a)(9)-5, Q&A-7, of the Regulations;
3. That any direct rollover from Plan Y to an IRA established on behalf of Marital Trust M that is treated as an inherited IRA pursuant to section 402(c)(11) of the Code will not be included in the taxable income of Marital Trust M in the year in which the direct rollover is made.

With respect to your ruling requests, 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)(B)(ii) of the Code provides that when an employee dies before the

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distribution of the employee's interest has begun in accordance with Section 401(a)(9)(A)(ii), the entire interest of the employee will be distributed within 5 years after the death of such employee.

Section 401(a)(9)(B)(iii) provides an exception to the 5-year rule: 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 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 1 year after the date of the employee's death or such later date as the Secretary may by regulations prescribe, for purposes of clause (ii), the portion referred to in subclause (I) shall be treated as distributed on the date on which such distributions begin.

Section 401(a)(9)(C) of the Code provides, in relevant part, that, for purposes of section 401(a)(9), 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.

Section 401(a)(9)(E) of the Code provides that for the purpose of section 401, the term "designated beneficiary" means any individual designated as a beneficiary by the employee.

Section 1.401(a)(9)-3 of the Regulations, Q&A-3(a), provides that if the spouse is not the sole designated beneficiary, distributions are required to begin on or before the end of the calendar year immediately following the calendar year in which the employee died.

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 in order to be a designated beneficiary so long as the individual who is to be the beneficiary is identifiable under the plan. The member of a class of beneficiaries capable of contraction or expansion will be treated as being identifiable if it is possible to identify the class member with the shortest life expectancy. Further, 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) unless that individual is designated as a beneficiary under the plan.

Section 1.401(a)(9)-4 of the 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 or a charitable organization, 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 beneficiary for purposes of section 401(a)(9), even if there are also individuals designated as beneficiaries.

Section 1.401(a)(9)-4 of the 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 the date of death. 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)-4 of the Regulations, Q&A-5, provides that where a trust is named as a beneficiary of an employee, 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 under Q&A-5(b) 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 Regulations, Q&A-5(c), provides that if the trust has more than one beneficiary, the rules under section 1.401(a)(9)-5, Q&A-7, determine which beneficiary's life expectancy shall be used to determine the distribution period.

Section 1.401(a)(9)-5, Q&A-7(a), states that if more than one individual is a designated beneficiary, the beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the applicable distribution period.

Under example 1(iii) of section 1.401(a)(9)-5 of the Regulations, Q&A-7(c)(3), if a trustee is not obligated to distribute the entire minimum required distribution received by a trust from a qualified plan directly to a beneficiary, then a portion of the minimum required distribution may accumulate for the benefit of remainder beneficiaries. As a result, the remainder beneficiaries are designated beneficiaries and their life expectancies must be considered when calculating the distribution period.

Section 402(c)(1) of the Code provides, generally, that if any portion of an eligible rollover distribution from a section 401(a) qualified retirement plan is transferred into an eligible retirement plan, the portion of the distribution so transferred shall not be includible in gross income in the taxable year in which paid.



Section 402(c)(4) of the Code defines an eligible rollover distribution as any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust; except that such term shall not include--

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made--

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

(ii) for a specified period of 10 years or more,

(B) any distribution to the extent such distribution is required under section 401(a)(9), and

(C) any distribution which is made upon hardship of the employee.

Section 402(c)(8)(B) of the Code defines an eligible retirement plan as (i) an individual retirement account described in section 408(a), (ii) an individual retirement annuity described in section 408(b) (other than an endowment contract), (iii) a trust qualified under section 401(a), (iv) an annuity plan described in section 403(a), (v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and (vi) an annuity contract described in section 403(b).

Section 402(c)(11) of the Code describes distributions to an inherited individual retirement plan of a nonspouse beneficiary, and provides:

(A) In general. If, with respect to any portion of a distribution from an eligible retirement plan described in paragraph (8)(B)(iii) of a deceased employee, a direct trustee-to-trustee transfer is made to an individual retirement plan described in clause (i) or (ii) of paragraph (8)(B) established for the purposes of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined by section 401(a)(9)(E)) of the employee and who is not the surviving spouse of the employee--

(i) the transfer shall be treated as an eligible rollover distribution,

(ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)) for purposes of this title, and

(iii) section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan.

(B) Certain trusts treated as beneficiaries.--For purposes of this paragraph, to the extent provided in rules prescribed by the Secretary, a trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

### Ruling 1

The beneficiaries of Marital Trust M will be considered designated beneficiaries under section 401(a)(9) of the Code if Marital Trust M satisfies the requirements of section 1.401(a)(9)-4, Q&A-5(b), of the Regulations. Taxpayer A has represented, and the Service assumes for purposes of this ruling, that Trust T is valid under the law of State S. Pursuant to paragraph 34 of Trust T, Trust T became irrevocable upon Decedent B's death. Taxpayer A has represented that a copy of Trust T was provided to the plan

administrator of Plan Y by October 30 of the year following the year of Decedent B's death, as required by section 1.401(a)(9)-4, Q&A-6, of the Regulations.

Therefore, the remaining question is whether or not the beneficiaries of Marital Trust M are identifiable within the meaning of section 1.401(a)(9)-4, Q&A-1, of the Regulations. A class of beneficiaries will be treated as identifiable if the beneficiary with the shortest life expectancy can be identified. Only individuals may be designated beneficiaries.

Under the terms of Marital Trust M, the trustee is not obligated to distribute the entire minimum required distribution to Spouse C. Consequently, the remainder beneficiaries—the Exemption Trusts and the Primary Trusts—must also be considered.

The terms of the Exemption Trusts provide that Daughter D and Son E are the sole beneficiaries until the death of each child. Daughter D and Son E have a testamentary power of appointment exercisable only in favor of the lineal descendants of Decedent B. To the extent that Daughter D or Son E fails to exercise that power as of his or her death, the remaining trust property passes to that child's lineal descendants, or, if there are none, to Decedent B's lineal descendants. As a result, any potential beneficiaries of the Exemption Trusts will be natural persons. In addition, because Daughter D is the oldest living lineal descendant of Decedent B, and is younger than Spouse C, no potential beneficiary could have a life expectancy longer than Spouse C.

The terms of the Primary Trusts also provide that Daughter D and Son E are the only beneficiaries until each of their deaths. Each child may withdraw half of the trust assets at age 30 and the balance at age 35. To the extent that the child fails to exercise his or her power of appointment as of the child's death, the remainder of the trust passes to the child's lineal descendants, and if there are none, to Decedent B's lineal descendants. At the time of Decedent B's death, Daughter D was 35 and therefore sole beneficiary of her Primary Trust. Son E was over 30 but under 35. Son E was therefore sole beneficiary to half of his Primary Trust, but had a testamentary power of appointment over the remainder. Son E had no children; therefore, if he failed to exercise his appointment power as of his death, the balance of his trust would pass to Daughter D, who would have a right to withdraw the entire principal.

Under the terms of Trust T, Son E could exercise his power of appointment in favor of any entity other than himself, his estate, or the creditors of either, and, to the extent the GST tax would otherwise apply, his power of appointment expanded to include himself, his estate, and the creditors of both. Son E executed a partial release of his testamentary power of appointment over the remaining half of his Primary Trust by written instrument dated Date 9. The Service assumes for purposes of this ruling that the release met any applicable requirements under the law of State S. Pursuant to Son E's release, he relinquished his right to appoint at his death any portion of the income or principal of his Primary Trust to any beneficiary who is not a natural person or who is born before Spouse C. As a result of this release, the class of potential beneficiaries as of September 30 of the year following Decedent B's death contained only individuals, and the beneficiary with the shortest life expectancy was identifiable. Therefore, with respect to



the first ruling request, the beneficiaries of Marital Trust M will be treated as "designated beneficiaries" within the meaning of section 401(a)(9)(E) and section 1.401(a)(9)-4, Q&A-1 and 5, of the Regulations.

### Ruling 2

Because Marital Trust M had more than one designated beneficiary as of September 30 of the year following the year of Decedent B's death, the beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the applicable distribution period. Daughter D and Son E are both younger than Spouse C. Under the terms of the Exemption Trusts, the children may exercise their powers of appointment only in favor of the lineal descendants of Decedent B, and should they fail to exercise this power, the assets pass to the children's lineal descendants or the descendants of Decedent B. Daughter D is the oldest living descendent of Decedent B. As for the Primary Trusts, Daughter D is the sole beneficiary of her Primary Trust. Son E is the sole beneficiary of one half of his Primary Trust, and may exercise an appointment power with regard to the second half of his Primary Trust, but only in favor of a natural person who is not older than Spouse C. Should he fail to exercise this power, the assets pass to his lineal descendants or the descendants of Decedent B. Therefore, with respect to the second ruling request, we conclude that Spouse C is the designated beneficiary of Marital Trust M with the shortest life expectancy, and her life expectancy will determine the applicable distribution period for Decedent B's interest in Plan Y.

### Ruling 3

In Ruling 1, we concluded that the beneficiaries of Marital Trust M are designated beneficiaries of Decedent B within the meaning of section 401(a)(9)(E). Taxpayer A has asked us to assume that an individual retirement plan, as described in sections 408(a) or 408(b) of the Code, has been established for the purpose of receiving a rollover distribution from the account of Plan Y of which Marital Trust M is a beneficiary. Therefore, with respect to your third ruling request, we conclude that the transfer of any portion of a distribution from Decedent B's account in Plan Y to an individual retirement plan described in section 408(a) or 408(b) of the Code, established for the purpose of receiving the distribution on behalf of Marital Trust M, shall be treated as an eligible rollover distribution within the meaning of section 402(c)(4), and the individual retirement plan shall be treated as an inherited individual retirement account or annuity within the meaning of section 402(c)(11).

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 ruling letter is based on the assumption that Plan Y is otherwise qualified under Code section 401(a) at all relevant times.

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.

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Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative. If you wish to inquire about this ruling, please contact \*\*\*. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Donzell Littlejohn, Manager,  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

cc. \*\*\*