



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

NOV 17 2011

201208039

Uniform Issue List: 401.06-00, 401.06-02, 408.00-00

SE:T:EP:RA:T2

Legend:

Taxpayer A: ***
Taxpayer B: ***
Taxpayer C: ***
Taxpayer D: ***
Taxpayer E: ***
Decedent L: ***
Representative Q: ***
IRA X: ***
Age A: ***
Custodian M: ***
Trust T: ***
Trust F: ***
Trust S: ***
Date 1: ***
Date 2: ***

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Date 3: ***

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County S: ***

State J: ***

Dear ***, ***.

This is in response to a request submitted on behalf of Taxpayer A by its authorized representative dated April 8, 2010 as supplemented by additional correspondence submitted on May 27, 2010, June 1, 2010, June 9, 2010, July 8, 2010 and February 8, 2011, for rulings under sections 401(a)(9) and 408(d)(3) of the Internal Revenue Code (the "Code"). The request for rulings is based on the following facts and representations.

Decedent L, died testate on Date 1 at Age A having reached her "required beginning date" as that term is defined in section 401(a)(9) of the Code. Decedent L was survived by four children, Taxpayer B, Taxpayer C, Taxpayer D and Taxpayer E.

As of her date of death, Decedent L was the owner of an individual retirement arrangement, IRA X, which is represented to have met the requirements of section 408 of the Internal Revenue Code maintained by Custodian M. Additionally, it has been represented that Taxpayer A (estate of Decedent L) was the sole named beneficiary of IRA X, pursuant to IRA X's beneficiary designation form.

Decedent L's Last Will and Testament, executed on Date 2, was duly admitted to probate in County S of State J. Pursuant to Article III of Decedent L's Last Will and Testament all of Taxpayer A's (Decedent L's estate) interest was bequeathed to Trust T.

Article 5.1 of Trust T divides Trust T into two separate trusts upon Decedent L's death: Trust F, a credit trust, and Trust S, a survivor's trust. Trust F was intended for the payment of tax obligations relating to the death of Decedent L and the remainder of Taxpayer A's (Decedent L's estate) interest was bequeathed to Trust S. Taxpayer's B, C, D, and E are the sole beneficiaries of Trust F, Trust S and Trust T.

On Date 3, Taxpayers B, C, D and E executed an agreement in the Superior Court of County S in State J waiving the funding of Trust T. Pursuant to this agreement, Taxpayer A's (Decedent L's estate) interest passed to Trust S. It has been represented that the both Trust S and the disclaimer of the Trust T are valid under the laws of State J. Therefore, Trust S was the sole beneficiary of the estate.

Article 8.4 of Trust T provides that upon the death of Decedent L the trustee is directed to distribute the trust estate equally among Taxpayers B, C, D and E, the sole beneficiaries.

Taxpayers B, C, D, and E propose to transfer, by means of a trustee to trustee transfer, their respective one-quarter interests in Taxpayer A's IRA X into 4 separate IRAs, each titled "Decedent L (Deceased) IRA f/b/o Taxpayer B [or C, D or E, respectively, as appropriate] as beneficiary of Decedent L's estate." Taxpayers B, C, D and E then propose to receive Code section 401(a)(9) minimum distributions from their beneficiary IRAs beginning in calendar year 2011 over Decedent L's remaining life expectancy.

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

1. That, as the beneficiaries of Taxpayer A's interest in IRA X, Taxpayers B's, C's, D's and E's respective one-quarter interests of IRA X can be segregated and held in separate IRAs for purposes of determining Taxpayers B's, C's, D's and E's Code section 401(a)(9) minimum required distributions;
2. That the IRA created by means of a trustee to trustee transfer, which will be titled "Decedent L (Deceased) f/b/o Taxpayer B [or C, D or E, respectively, as appropriate], as beneficiary of Decedent L's estate," constitutes an inherited IRA under section 408(d)(3)(C) of the Code;
3. That Taxpayers B, C, D and E may each receive minimum distributions required under section 401(a)(9) of the Code from the specific beneficiary IRA set up in the name of Decedent L for the respective taxpayer's benefit over Decedent L's remaining life expectancy using the age of Decedent L as of Decedent L's birthday in the calendar year of Decedent L's death reduced by one for each calendar year pursuant to section 1.401(a)(9)-5 of the Income Tax Regulations, Question and Answer 5(a)(2); and
4. That the transfer of each of Taxpayers B's, C's, D's and E's respective one-quarter interests in Taxpayer A's interest in IRA X to each above described beneficiary IRA will not constitute a taxable distribution within the meaning of section 408(d)(1) of the Code to Taxpayers B, C, D or E and does not constitute a rollover as that term is used in section 408(d)(3) of the Code.

The issues raised in this ruling request are whether beneficiaries (Decedent L's children, Taxpayers B, C, D and E) of an IRA holder may, after the death of the IRA holder, transfer their respective one-quarter interests in the deceased's IRA to an IRA set up to solely benefit each beneficiary-child, and whether each

beneficiary-child may receive distributions from his or her respective beneficiary IRA over the deceased's remaining life expectancy without regard to the distribution decisions made by the other IRA beneficiaries.

With respect to your first letter ruling request, four distinct beneficiary IRAs will be set up to benefit Taxpayers B, C, D, and E. Although neither the Code nor the Income Tax Regulations promulgated on April 17, 2002, with respect to sections 401(a)(9) and 408(a)(6) of the Code (see also, 2002-19 I.R.B. 852, May 13, 2002) ("Regulations") preclude the posthumous division of IRA X into more than one IRA, the Regulations do preclude "separate account" treatment for section 401(a)(9) of the Code purposes where amounts pass through an estate.

Accordingly, each of the four distinct beneficiary IRAs, each to be created by means of a trustee-to-trustee transfer of a portion of IRA X to a beneficiary IRA established in Decedent L's name for the benefit of Taxpayers B, C, D and E, respectively, may be maintained separately. Each beneficiary IRA will be titled in the following format, "Decedent L (deceased) f/b/o Taxpayer B [or C, D, or E, respectively, as appropriate] as beneficiary of Decedent L's estate."

With respect to your second letter ruling request, 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 addition, section 408(d)(3)(C)(ii) of the Code provides that an IRA will be considered an "inherited" IRA if the IRA is maintained by a person who acquired the IRA by reason of the death of another individual and was not the surviving spouse of such individual.

Pursuant to the facts represented herein, Taxpayers B, C, D, and E, neither of whom were Decedent L's spouse, will acquire the beneficiary IRAs by virtue of the Decedent L's death. Accordingly, to the extent the beneficiary IRAs are considered IRAs, they will constitute "inherited" IRAs within the meaning of such term under section 408(d)(3)(C) of the Code.

With respect to your third letter ruling request, 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) of the Code 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 that a trust shall not constitute a qualified trust under the Code unless the plan provides that the entire interest of each employee/IRA holder will be distributed to such employee/IRA holder not later than the required beginning date, or will be distributed, beginning not later than the required beginning date, in accordance with Regulations, over the life of such employee/IRA holder or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such

employee/IRA holder or the life expectancy of such employee/IRA holder and a designated beneficiary).

Section 401(a)(9)(B)(i) of the Code provides, in general, that if an employee/IRA holder dies after distribution of his interest has begun in accordance with section 401(a)(9)(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 as of the date of his death.

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 employee/IRA holder attains age 70 and $\frac{1}{2}$.

Section 1.408-8 of the Regulations, Question and Answer 1(a) provides, in part, that IRAs are subject to the required minimum distribution rules under section 401(a)(9) of the Code and that in order to satisfy section 401(a)(9) of the Code for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2003, the rules of section 1.401(a)(9)-1 through 1.401(a)(9)-9 of the Regulations must be applied, except as otherwise provided.

Section 1.401(a)(9)-4 of the Regulations, Question and Answer 3, states 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 the employee's/IRA holder's estate, may not be a designated beneficiary.

Section 1.401(a)(9)-4 of the Regulations, Question and Answer 4(a), provides that in order to be a designated beneficiary, that beneficiary must be a beneficiary as of the date of the employee's/IRA holder's death. The designated beneficiary will generally 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.

Section 1.401(a)(9)-4 of the Regulations, Question and Answer 5(a) provides that a trust is not a designated beneficiary even if the trust is named as a beneficiary. However, Section 1.401(a)(9)-4 of the Regulations, Question and Answer 5(a) provides that if the requirements of Question and Answer 5(b) are met, and the required documentation as described in Question and Answer 6(b) is provided to the plan administrator/IRA custodian by the trustee of such trust, the beneficiaries of the trust will be treated as having been designated as beneficiaries of the employee/IRA holder under the plan/IRA for purposes of determination the distribution period under section 401(a)(9) of the Code.

In analyzing Decedent L's estate, as well as the provisions of Trust T, F and S, it is clear that Taxpayers B, C, D, and E are the beneficiaries of the interest of IRA X. However, because Decedent L's estate, rather than Trust T, was listed as the

beneficiary of IRA X by IRA X's beneficiary designation form, Taxpayers B, C, D, and E cannot be designated beneficiaries with respect to IRA X for purposes of section 401(a)(9) of the Code and the Regulations. Accordingly, Decedent L died without having a designated beneficiary, within in the meaning of section 401(a)(9) of the Code and the Regulations, with respect to IRA X.

Section 1.401(a)(9)-5 of the Regulations, Question and Answer 5(a)(2) provides, in summary, that if an employee/IRA holder dies on or after his required beginning date without having designated a beneficiary, then post-death distributions must be made over the remaining life expectancy of the employee/IRA holder determined in accordance with paragraph (c)(3) of this A-5.

Section 1.401(a)(9)-5 of the Regulations, Question and Answer 5(c)(3) provides, in general, that, with respect to an employee/IRA holder who does not have a designated beneficiary, the applicable distribution period measured by the employee's/IRA holder's remaining life expectancy is the life expectancy of the employee/IRA holder using the age of the employee/IRA holder as of the employee's/IRA holder's birthday in the calendar year of the employee's/IRA holder'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 of the employee's/IRA holder's death.

Further, with respect to your third letter ruling request, Section 1.401(a)(9)-8, Question and Answer 2(a) of the Regulations contains the "separate account" rules as applied to defined contribution plans. A "separate account" is an account under which the beneficiary or beneficiaries differ from the beneficiary or beneficiaries of other accounts. In general, if separate accounts are established, 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/IRA is not aggregated with the other separate accounts under the plan/IRA in order to determine whether the distributions from such separate account satisfy the requirements of section 401(a)(9) of the Code. Rather, the rules in section 401(a)(9) of the Code apply separately to each separate account under the plan/IRA.

Section 1.401(a)(9)-8, Question and Answer 3 of the Regulations provides that a separate account is a separate portion of an employee's/IRA holder's benefit reflecting the separate interest of the employee's/IRA holder's beneficiaries under the plan/IRA as of the date of the employee's/IRA holder'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, Question and Answer 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. In like manner, the

“separate account” rules are not available to beneficiaries of an estate with respect to the estate’s interest in an employee’s plan or IRA interest.

The relevant Single Life Table for determining life expectancy is provided in Section 1.401(a)(9)-9, Question and Answer 1 of the Regulations.

Section 1.408-8 of the Regulations, Question and Answer 1(a) provides, in part, that IRAs are subject to the required minimum distribution rules under section 401(a)(9) of the Code.

Therefore, in response to your third ruling request we conclude that Taxpayers B, C, D and E may each receive minimum distributions required under section 401(a)(9) of the Code from their respective beneficiary IRA set up in the name of Decedent L for each of B’s, C’s, D’s or E’s benefit over Decedent L’s remaining life expectancy using the age of Decedent L as of Decedent L’s birthday in the calendar year of Decedent L’s death reduced by one for each subsequent calendar year pursuant to section 1.401(a)(9)-5 of the Regulations, Question and Answer 5(a)(2), and 5(c)(3).

With respect to your fourth ruling request, section 408(d)(3)(C) of the Code provides that, in general, amounts from an “inherited” IRA cannot be rolled over into another IRA.

Revenue Ruling 78-406, 1978-2 C.B. 157 provides that the direct transfer of funds from one IRA trustee to another IRS 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 section 408(d) of the Code and 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.

Thus, with respect to your fourth ruling request, we conclude that the transfer of each of Taxpayers B’s, C’s, D’s or E’s respective one-quarter interests in Decedent L’s interest in IRA X to each above described beneficiary IRA will not, pursuant to Revenue Ruling 78-406, constitute a taxable distribution within the meaning of section 408(d)(1) of the Code to Taxpayers B, C, D or E and does not constitute a rollover as that term is used in section 408(d)(3) of the Code.

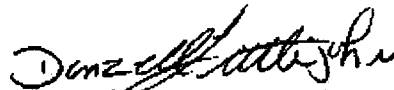
This ruling letter is based on the assumption that IRA X and the beneficiary IRA created after the trustee to trustee transfer either have met, are meeting, or will meet the requirements of section 408 of the Code at all times relevant thereto.

Pursuant to a power of attorney on file with this office, the original of this letter ruling is being sent to your authorized representative.

This letter is directed only to the taxpayer that requested it and is based solely on the representations made with respect thereto. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact *****
***** Employee Plans Technical Group 2 at () ***-**** or via
fax at () ***-****. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely,



Donzel H. Littlejohn, Manager,
Employee Plans Technical Group 2

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose

CC:

