



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

201320021

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

FEB 19 2013

Uniform Issue List: 401.06-00, 401.06-02

T: EP:RA: T3

Legend:

Trust A:

Child B:

Individual E:

Individual C:

City D:

Bank N:

Bank P:

Decedent J:

Decedent P:

IRA X:

State K:

Age F:

Age G:

Age H:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Date 8:

Dear

This is in response to your letter dated January 6, 2012, as supplemented by correspondence dated September 27, 2012, and February 7, 2013, submitted on your behalf by your authorized representative, in which you request rulings under section 401(a)(9) of the Internal Revenue Code ("the Code").

Trust A is a trust established under the Last Will and Testament of Decedent P, dated Date 1 (the "Will"). Trust A is the named beneficiary of an Individual Retirement Account, IRA X, established by Decedent P, on or about February 7, 2004, by entering into the Bank N Individual Retirement Trust Account Agreement (the Bank N IRA Agreement) and the Individual Retirement Adoption Agreement with Bank N.

Through a series of bank mergers, the trust operations of Bank N ultimately merged with Bank P, on or about Date 2. As a result of the merger, Bank P is currently the trustee for both Trust A and IRA X.

It is represented that Trust A is a valid see-through trust under section 1.401(a)(9)-4, Q&A-5, of the Income Tax Regulations ("Regulations") and that beneficiaries of Trust A with respect to Trust A's interest in IRA X may be treated as designated beneficiaries because the following requirements are met: (1) Trust A is valid under the laws of State K, (2) Trust A became irrevocable upon the death of the IRA owner, (3) The beneficiaries of Trust A who are beneficiaries with respect to Trust A's interest in IRA X

are identifiable within the meaning of section 1.401(a)(9)-4, Q&A-5(a), of the Regulations from the trust instrument, and (4) The documentation described in section 1.401(a)(9)-4, Q&A-6, of the Regulations has been timely provided to the custodian.

Decedent P died in City D on Date 3, at Age F. Decedent P's husband, Decedent J, predeceased her on Date 4. Decedent P is survived by her only child, Child B, who was born on Date 5, her mother, Individual E, who was born on Date 6, and her brother, Individual C who was born on Date 7.

As of the date of Decedent P's death, Child B was Age G and Individual E was Age H.

Decedent P's Will was modified by four codicils. The first Codicil was revoked by the Second Codicil which appoints new guardians for Decedent P's minor children in the event Decedent P's husband predeceases her. The Third Codicil provides for a new definition for the term "Education" as it is used in the Will. The Fourth Codicil appoints new co-executors and provided for a specific bequest.

Item FOURTH of the Will provides that if Decedent P's husband, Decedent J, fails to survive her by thirty (30) days, Decedent P devises and bequeaths all her property in trust to Bank N, as Trustee, to be held for the benefit of her children pursuant to certain terms and conditions.

Item FOURTH, Paragraph (a) of the Will provides that the entire trust (i.e., Trust A) is to be administered as one trust until one of Decedent P's children attains the age of twenty-one (21), at which time the child will be entitled to receive his or her share of Trust A as follows: (i) one-quarter (1/4) of the principal and any accumulated income at age twenty-one (21); (ii) one-third (1/3) of the remaining principal and any accumulated income at age twenty-five (25); (iii) one-half (1/2) of the remaining principal and any accumulated income at age thirty (30); and (iv) the remaining balance of the principal and accumulated income at age thirty-five (35).

Item FOURTH, Paragraph (a)(1) of the Will, provides that so long as any of Decedent P's children are under age eighteen (18), the Trustee will have the discretion to distribute the net income of Trust A to, or for the benefit of, any or all of Decedent P's children for their "support, welfare, maintenance and education." In addition, the Trustee may invade the principal of Trust A, in the event the net income of Trust A is insufficient to provide adequate maintenance, support, welfare, or education for any of Decedent P's children.

Item FOURTH, Paragraph (a)(5) of the Will, provides in the event that one (1) of Decedent P's children predeceases her or dies before the termination of Trust A, the interest of such child passes to the child's surviving issue. If the deceased child dies without issue, then his or her interest in Trust A ceases.

Item FOURTH, Paragraph (b) of the Will, provides that Trust A will terminate when all of Decedent P's children have attained the age thirty-five (35). At that time, the balance of Trust A will be distributed to Decedent P's then living children equally and the share of a deceased child will be distributed to the issue of the deceased child, per stirpes.

Except for the beneficiaries who are identified in Item FOURTH, Paragraph (a)(5) of the Will, the Will does not provide for additional contingent beneficiaries for Trust A.

Pursuant to Section 3.4 of the Bank N IRA Agreement, Decedent P named Child B as the primary beneficiary of IRA X as of the establishment date of IRA X. On or about Date 8, Decedent P filed a written beneficiary designation form which revoked the prior designation of Child B and named the "Trust created under the Will dated Date 1, Bank N, Trustee", Trust A, as the primary beneficiary of IRA X.

In addition, the Bank N IRA Agreement appoints Bank N as the Trustee of IRA X.

Based on the facts and representations, you request the following rulings:

1. That Trust A, the named beneficiary of IRA X, is a "see-through trust" within the meaning of section 1.401(a)(9)-4, Q&A-5, of the Regulations. Thus, the beneficiaries of Trust A are the designated beneficiaries of IRA X for purposes of section 401(a)(9) of the Code.
2. That Child B as the beneficiary of Trust A is the only designated beneficiary of IRA X. Thus Child B's life expectancy will be used to determine the applicable distribution period under section 401(a)(9) of the Code.

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)(B)(ii) 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), then his entire interest must be distributed within 5 years of his death.

Code section 401(a)(9)(B)(iii) provides an exception to the 5-year rule (above). In general, pursuant to the exception, if any portion of the interest of a deceased plan participant (IRA holder) is payable to (or for the benefit of a designated beneficiary),

such portion will be distributed beginning not later than 1 year after the date of the deceased's death (or a later date as prescribed by the Secretary under regulations) in accordance with regulations over the life of the designated beneficiary (or a period not extending beyond the life expectancy of the 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 1/2.

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

Code section 408(a) provides the rules governing IRAs. Code section 408(d)(1) provides that except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distribute, as the case may be, in the manner provided under section 72.

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 an IRA trust is maintained.

Section 1.401(a)(9)-3, Q&A-3(a), of the Regulations provides, in general, that with respect to the life expectancy exception to the 5-year rule described in section 401(a)(9)(B)(iii) of the Code and in A-1, distributions are required to begin to a non-spouse beneficiary on or before the end of the calendar year immediately following the calendar year in which the employee died. This rule also applies if another individual is a designated beneficiary in addition to the employee's (IRA holder's) surviving spouse.

Section 1.401(a)(9)-3, Q&A-4(a), of the Regulations, provides, in relevant part, that in the absence of a plan provision to the contrary, with respect to an individual who dies prior to reaching his required beginning date, if said individual has designated a beneficiary, distributions from his plan or IRA are to be made in accordance with the life expectancy rule of Code sections 401(a)(9)(B)(iii) and (iv).

Section 1.401(a)(9)-4, Q&A-1, of the Regulations provides, in relevant part, that a designated beneficiary is an individual who is designated as a beneficiary under a plan either by the terms of the plan or by an affirmative election by the employee. A beneficiary designated under the plan is an individual who is entitled to a portion of an employee's benefit contingent on the employee's death or another specified event. 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. Q&A-1 further provides that a person who takes under a will or otherwise under applicable state law will not be a designated beneficiary unless that individual also is designated as a beneficiary under the plan.

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). A person who is not an individual, such as a trust or the employee's estate, may not be a designated beneficiary. However section 1.401(a)(9)-4, Q&A-5, of the Regulations 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 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, Q&A-4, of the Regulations 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 or IRA holder'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.

Section 1.401(a)(9)-4, Q&A-5(c), of the Regulations provides, in relevant part, that the separate account rules of A-2 of section 1.401(a)(9)-8 are not available to trust beneficiaries with respect to the trust's interest in the employee's (IRA holder's) benefit.

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(c)(1), of the Regulations provides, in general, that, with respect to a non-spouse 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 calendar 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)-5, Q&A-7(a), of the Regulations provides, in relevant part, that, except as otherwise provided in paragraph (c) of this A-7 (not pertinent to this ruling request), if more than one individual is designated as a beneficiary with respect to an employee as of the applicable date for determining the designated beneficiary, the designated beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the applicable distribution period.

Section 1.401(a)(9)-5, Q&A-7(c), of the Regulations provides, in relevant part, that a person who has any right (including a contingent right) to an employee's benefit beyond being a mere potential successor in the interest of one of the employee's beneficiaries upon that beneficiary's death, must be considered for purposes of determining who, if anyone, is the employee's designated beneficiary. Q&A-7(c) provides an example pursuant to which a principal remainderman of an income beneficiary of an employee's interest must be considered for purposes of determining who, if anyone is the employee's designated beneficiary.

Section 1.401(a)(9)-8, Q&A-2(a)(2), of the Regulations provides that, if an employee's benefit in a defined contribution plan is divided into "separate accounts" in accordance with the conditions contained therein, distributions from the separate account may be based on the life expectancy of the beneficiary of the "separate account" without regard to the life expectancies of the beneficiaries of other separate accounts.

Section 1.401(a)(9)-9, Q&A-1, of the Regulations sets forth the "Single Life Table" to be used to determine the life expectancy of an individual.

With respect to your ruling requests, it is represented that as of Decedent P's date of death, Decedent P had not attained the age of 70½. Thus, IRA X was not required to begin distribution of Decedent P's benefits pursuant to section 401(a)(9)C of the Code. Since Decedent P died before the distribution of the benefits began, either the 5-year rule or the life expectancy rule applies to determine the period for the distribution of the benefits. The IRA X Agreement does not specify whether the 5-year rule or the life expectancy rule applies to determine the period for the distribution of benefits. Under section 1.401(a)(9)-4, of the Regulations if the governing instrument does not specify whether to apply the 5-year rule or the life expectancy rule, then the distributions of the benefits are required to be made in accordance with the life expectancy rule where a designated beneficiary exists. If, however, there is no designated beneficiary, then the 5-year rule applies.

Under section 1.401(a)(9)-4, Q&A-1, of the Regulations a designated beneficiary is an individual designated as a beneficiary under the governing instrument, either by the terms of that instrument or if the governing instrument so provides, by an affirmative election specifying the beneficiary. In the instant case, Decedent P designated Trust A as the beneficiary of IRA X in accordance with Section 3.4 of the IRA X agreement.

Under section 1.401(a)(9)-4, Q&A-3, of the Regulations, a trust cannot be a designated beneficiary. However, under the special trust rule, the beneficiaries of the trust (and not the trust itself) may be treated as the designated beneficiaries of the governing instrument if certain requirements are met.

A trust will be treated as a "see-through trust" within the meaning of section 1.401(a)(9)-4, Q&A-5, of the Regulations if: (i) the trust is valid under state law, (ii) the trust is irrevocable or, by its terms, will become irrevocable upon the death of the employee, (iii) the beneficiaries of the trust are identifiable within the meaning of section 1.401(a)(9)-4, Q&A-1, of the Regulations from the trust instrument; and (iv) relevant documentation has been timely provided to the plan administrator.

In the instant case, it is represented that: (1) Trust A is valid under the laws of State K, (2) Trust A became irrevocable upon the death of Decedent P, (3) the beneficiaries of Trust A who are beneficiaries with respect to Trust A's interest in IRA X are identifiable, within the meaning of section 1.401(a)(9)-4, Q&A-5(a), of the Regulations, from the Trust A instrument, and (4) the documentation described in section 1.401(a)(9)-4, Q&A-6, of the Regulations has been timely provided to the custodian of IRA X. Accordingly, we rule that Trust A constitutes a valid "see-through trust" with respect to IRA X, and the beneficiaries of Trust A are the designated beneficiaries of IRA X for purposes of section 401(a)(9) of the Code.

Since Trust A constitutes a valid "see-through trust", it is necessary to determine who, if anyone, is the designated beneficiary of IRA X, within the meaning of sections 401(a)(9) and 408(a)(6) of the Code. In accordance with section 1.401(a)(9)-5, Q&A-7(a), of the Regulations, the trust beneficiary with the shortest life expectancy will be the designated beneficiary with respect to IRA X.

Section 1.401(a)(9)-4 of the Regulations, Q&A-1, provides, in relevant part, that 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. Section 1.401(a)(9)-4, Q&A-5, of the Regulations provides that where a trust is named as the beneficiary of an employee under a plan, the beneficiaries of a trust with respect to the trust's interest in an employee's benefit will be treated as having been designated as beneficiaries of the employee under the plan if certain requirements are met.

In this case, it has been represented that the requirements of section 1.401(a)(9), Q&A-5, of the Regulations have been met. In addition, the identity of each person entitled to receive any portion IRA X within Trust A upon the death of Decedent P is determinable by perusing the provisions of Trust A. Item Fourth, Paragraph (a) of the Will names Decedent P's children as beneficiaries of Trust A. Although Decedent P is survived by her only child, Child B, her mother, Individual E, and her brother, Individual C, the Will does not provide for additional contingent beneficiaries for Trust A. Child B is the only child of Decedent P and therefore Child B is the only beneficiary of Trust A's interest in

IRA X. Accordingly, we conclude that Child B is the designated beneficiary with respect to IRA X and that Child B's life expectancy will be used to determine the applicable distribution period under section 401(a)(9) of the Code.

This ruling letter is based on the assumption that IRA X meets the requirements of Code section 408(a) of the Code at all times relevant thereto and that Trust A is valid under the laws of State K.

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

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.

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.

If you wish to inquire about this ruling, please contact

Please address all

correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: