



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201430022

APR 30 2014

SET: EP: RA: T2

Uniform Issue List: 401.06-01, 408.03-00, 691.00-00

Legend:

Trust = ***

Decedent = ***

IRA W = ***

IRA X = ***

IRA Y = ***

IRA Z = ***

Financial Institution = ***

Trustee/Beneficiary A = ***

Trustee/Beneficiary B = ***

Dear ***:

This is in response to your request dated November 28, 2012, as supplemented by correspondence dated April 1, 2013, September 13, 2013, and November 5, 2013, in

which you request several rulings under sections 401(a)(9), 408, and 691 of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalties of perjury in support of the rulings requested.

Decedent established Trust on April 8, 2010. On July 5, 2012, Decedent died at age 84. At the time of his death, Decedent owned IRAs W, X, Y, and Z, individual retirement accounts within the meaning of section 408(a) of the Code. Decedent had designated Trust as the primary beneficiary of IRAs W, X, Y, and Z. IRAs X, Y, and Z have been consolidated into IRA W via trustee-to-trustee transfer.

You represent that Trust is valid under state law, and that a copy of Trust was delivered to Financial Institution prior to October 31, 2013. Trust became irrevocable upon Decedent's death. The Trust's document provides that, after certain specific distributions that have already been satisfied prior to the filing of this request, the balance of Trust shall be distributed to 19 individual beneficiaries. The Trust provides that the interest of one of the 19 beneficiaries shall be established as an educational trust, and you represent that it shall be funded by Trust from non-IRA assets of Trust, leaving 18 remaining beneficiaries for purposes of this request ("the 18 remaining beneficiaries"). One of the 18 remaining beneficiaries was born prior to Decedent, and all survived him. None of the 18 remaining beneficiaries is Decedent's surviving spouse.

Trustee/Beneficiary A and Trustee/Beneficiary B are the trustees of Trust and each is also one of the 18 remaining beneficiaries of Trust.

Trustee/Beneficiary A and Trustee/Beneficiary B now propose to divide IRA W via trustee-to-trustee transfers into 18 inherited IRAs (the "Inherited IRAs"), one for the benefit of each of Decedent's 18 remaining beneficiaries, each in the name of Decedent.

Based on the above, you request the following letter rulings:

1. That Trust constitutes a "see-through" trust within the meaning of section 1.401(a)(9)-4 of the Income Tax Regulations ("Regulations"), Q&A-5;
2. That division of IRA W by means of trustee-to-trustee transfers into the 18 Inherited IRAs in the name of Decedent: (a) will not result in taxable distributions or payments under section 408(d)(1) of the Code, and (b) will not constitute a transfer causing inclusion in the gross income of Trust or either Trustee/beneficiary under section 691(a)(2) of the Code;
3. That Trustee/Beneficiary A and Trustee/Beneficiary B may each receive the required minimum distributions under section 401(a)(9) of the Code from his or her respective Inherited IRA using the life expectancy of Decedent; and

4. That the separate account rules within the meaning of section 1.401(a)(9)-8 of the Regulations, Q&A-2, are not available to the beneficiaries of Trust with respect to Trust's interest in Decedent's benefit.

With respect to your first ruling request, section 408(a) of the Code provides the rules governing IRAs. Section 408(a)(6) provides that, under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) of the Code 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.

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)(i) of the Code provides, in general, that if an employee 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 attains age 70 1/2.

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

Section 1.408-8 of the Regulations, Q&A-1(a), provides, in relevant 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), 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, 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) 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 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.

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 for purposes of determining the distribution period for required minimum distributions after the employee's death 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 (e.g., have not received their entire interest before that September 30).

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 the trust with respect to the trust's interest in the 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.

Such a trust as described in Section 1.401(a)(9)-4 of the Regulations, Q&A-5, is often referred to as a "see-through" trust.

Section 1.401(a)(9)-4 of the Regulations, Q&A-6(b), provides, in relevant part, that the trustee must provide the plan administrator a copy of the actual trust document by October 31 of the calendar year immediately following the calendar year in which the employee died.

You have represented that Trust is valid under state law and that it became irrevocable upon the death of Decedent. Furthermore, the identity of each person entitled to receive any portion of IRA W upon Decedent's death is determinable under the

provisions of Trust. Finally, you represent that a copy of Trust was timely given to Financial Institution, the administrator of IRA W.

Therefore, with respect to your first ruling request, we conclude:

1. That Trust constitutes a "see-through" trust within the meaning of section 1.401(a)(9)-4 of the Regulations, Q&A-5.

With respect to the first part of your second ruling request, section 408(d)(1) of the Code provides generally that, in accordance with the rules of section 72 of the Code, amounts paid or distributed from an IRA are included in gross income by the payee or distributee.

Section 408(d)(3)(A) of the Code provides that paragraph (d)(1) of section 408 does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if --

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution, or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

Section 408(d)(3)(C) of the Code provides, generally, that amounts from an "inherited" IRA cannot be rolled over into another IRA. In general, an "inherited" IRA is an IRA maintained by an individual who acquired the IRA by reason of the death of another if the acquiring individual is not the surviving spouse of such individual.

Revenue Ruling 78-406, 1978-2 C.B. 157 ("Rev. Rul. 78-406"), addressed the direct transfer of funds from one IRA trustee to another IRA trustee where both IRAs were held by the same IRA owner, and provided that the transfer did not constitute a payment or distribution includible in the gross income of the participant. Furthermore, such a transfer does not constitute a rollover contribution described in section 408(d)(3)(A) of the Code.

Therefore, with respect to the first part of your second ruling request, we conclude:

- 2.(a) That the division of IRA W by means of trustee-to-trustee transfers into the 18 Inherited IRAs in the name of Decedent will not result in taxable distributions or payments under section 408(d)(1) of the Code.

With respect to the second part of your second ruling request, section 691(a)(1) of the Code provides that the amount of all items of gross income in respect of a decedent

which are not properly includible in respect of the taxable period in which falls the date of his death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received, of: (A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent; (B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or (C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

Section 691(a)(2) of the Code provides that if a right, described in paragraph (1), to receive an amount is transferred by the estate of the decedent or a person who received such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of such right at the time of such transfer plus the amount by which any consideration for the transfer exceeds such fair market value. For purposes of this paragraph, the term "transfer" includes sale, exchange, or other disposition, or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a transfer to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

Section 1.691(a)-1(b) of the Regulations provides that the term "income in respect of a decedent" ("IRD") refers to those amounts to which a decedent was entitled as gross income, but which were not properly includible in computing the decedent's taxable income for the taxable year ending with the date of the decedent's death or for a previous taxable year under the method of accounting employed by the decedent. Section 1.691(a)-1(c) provides that the term "income in respect of a decedent" also includes the amount of all items of gross income in respect of a prior decedent, if (1) the right to receive such amount was acquired by the decedent by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent and if (2) the amount of gross income in respect of the prior decedent was not properly includible in computing the decedent's taxable income for the taxable year ending with the date of his death or for a previous taxable year.

Section 1.691(a)-4(a) of the Regulations provides that in general, the transferor must include in his gross income for the taxable period in which the transfer occurs the amount of the consideration, if any, received for the right or the fair market value of the right at the time of the transfer, whichever is greater.

Section 1.691(a)-4(b) of the Regulations provides that if the estate of a decedent or any person transmits the right to income in respect of a decedent to another who would be

required by section 691(a)(1) of the Code to include such income when received in his gross income, only the transferee will include such income when received in his gross income. In this situation, a transfer within the meaning of section 691(a)(2) has not occurred.

Section 1.691(a)-4(b)(2) of the Regulations provides that if a right to IRD is transferred by an estate to a specific or residuary legatee, only the specific or residuary legatee must include such income in gross income when received.

Revenue Ruling 92-47, 1992-1 C.B. 198, holds that a distribution to the beneficiary of a decedent's IRA that equals the amount of the balance in the IRA at the decedent's death, less any nondeductible contributions, is IRD under section 691(a)(1) of the Code that is includable in the gross income of the beneficiary for the tax year the distribution is received.

Therefore, with respect to the second part of your second ruling request, based solely on the facts and representations submitted, we conclude:

- 2.(b) That the division of IRA W and establishment of the 18 Inherited IRAs will not constitute a transfer within the meaning of section 691(a)(2) of the Code. The beneficiaries will each include, in their gross income, the amounts of IRD from their respective Inherited IRA when the distribution or distributions from the Inherited IRAs are received.

With respect to your third ruling request, section 1.401(a)(9)-4 of the Regulations, Q&A-4, provides in relevant part that, in general, in order to be a designated beneficiary, an individual must be a beneficiary as of the date of death. The employee's designated beneficiary for purposes of determining the applicable distribution period 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 employee's death.

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 of the Regulations, Q&A-7, determine which beneficiary's life expectancy shall be used to determine the distribution period.

Section 1.401(a)(9)-5 of the Regulations, Q&A-5(a), provides, in relevant part, that if an employee dies after distribution of his interest has begun (generally on or after the employee's required beginning date), in order to satisfy section 401(a)(9)(B)(i) of the Code, the applicable distribution period for distribution calendar years after the distribution calendar year containing the employee's date of death is, if the employee has a designated beneficiary as of the date determined under section 1.401(a)(9)-4 of the Regulations, Q&A-4, the longer of --

- (i) The remaining life expectancy of the employee's designated beneficiary;
and
- (ii) The remaining life expectancy of the employee.

Section 1.401(a)(9)-5 of the Regulations, Q&A-7(a), states that if more than one individual is a 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)-9 of the Regulations, Q&A-1, sets forth the "Single Life Table," to be used to determine the life expectancy of an individual.

Under the terms of Trust, the 18 remaining beneficiaries are the remaining beneficiaries of IRA W as of September 30, 2013. One of these individuals was born before Decedent and thus has a shorter remaining life expectancy than the remaining life expectancy of Decedent.

Therefore, with respect to your third ruling request, we conclude:

- 3. That Trustee/Beneficiary A and Trustee/Beneficiary B may each receive the required minimum distributions under section 401(a)(9) of the Code from his or her respective Inherited IRA using the life expectancy of Decedent.

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

Section 1.401(a)(9)-8 of the Regulations, Q&A-2(a)(2), 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.

Therefore, with respect to your fourth ruling request, we conclude:

- 4. That the separate account rules within the meaning of section 1.401(a)(9)-8 of the Regulations, Q&A-2, are not available to the beneficiaries of Trust with respect to Trust's interest in Decedent's benefit.

This ruling letter is based on the assumption that IRAs W, X, Y, and Z, and the IRAs to be established, met or will meet the requirements of section 408(a) of the Code at all relevant times. Furthermore, this ruling letter is based on the assumption that Trust is valid under state law as represented, and that the actions taken by Trustee/Beneficiary A and Trustee/Beneficiary B regarding Trust that are described in this ruling are authorized and valid under Trust and state law.

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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 the 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 ***** at (***) ***-***. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Jason Levine, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: ***