



Date 1 =

Date 2 =

Dear :

This letter is in response to your request for a letter ruling submitted by your authorized representative and received on December 23, 2019, regarding the applicable distribution period under section 401(a)(9) of the Internal Revenue Code and its corresponding Treasury Regulations.

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

Decedent established Trust (a living revocable trust), on Date 1. Decedent maintained six IRAs: IRA 1, IRA 2, IRA 3, IRA 4, IRA 5 and IRA 6 (Decedent's IRAs). The Trust is the sole named beneficiary of each of Decedent's IRAs. Decedent died on Date 2, prior to attaining age 70½, at which time Trust became irrevocable. Trust is valid under the laws of State.

The terms of Trust establish Subtrust to hold assets from Decedent's retirement accounts, including Decedent's IRAs. The terms of Subtrust provide that the trustee must pay income and principal from Subtrust to Spouse, from time to time, as the trustee deems appropriate. However, at any time, Spouse may require the trustee to distribute as much of Subtrust's assets as Spouse demands. The terms of Subtrust also provide that upon the death of Spouse, Individual A and Individual B (the children of Spouse and Decedent), are entitled to any remaining Subtrust assets. If either Individual A or Individual B predeceases Spouse, his or her share is divided between living descendants of Individual A or Individual B, as applicable. At the time of Decedent's death, Decedent was survived by Spouse, Individual A, Individual B, and grandchildren.

Based on the facts and representations, the following rulings were requested:

- 1) The beneficiaries of Trust will be treated as designated beneficiaries of Decedent's IRAs for purposes of determining the applicable distribution period under section 401(a)(9).
- 2) Pursuant to the provisions of section 1.401(a)(9)-4, Q&A-5, the applicable distribution period for Decedent's IRAs will be calculated based on the life expectancy of Spouse.

## Law

Section 408(a)(6) provides, with respect to IRAs, 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 IRA is maintained.

Section 1.408-8, Q&A-1(a), provides that an IRA is subject to the required minimum distribution rules provided in section 401(a)(9). In order to satisfy section 401(a)(9), the rules of sections 1.401(a)(9)-1 through 1.401(a)(9)-9 must be applied, except as otherwise provided in that section.

Section 1.408-8, Q&A-1(b), provides that for purposes of applying the required minimum distribution rules in §§1.401(a)(9)-1 through 1.401(a)(9)-9, the IRA trustee, custodian or issuer is treated as the plan administrator, and the IRA owner is substituted for the employee.

Section 1.408-8, Q&A-3, provides that in the case of distributions from an IRA, the term “required beginning date” means April 1 of the calendar year following the calendar year in which the individual attains age 70½.

Section 401(a)(9)(A) provides that the entire interest of an employee (i) must be distributed to such employee not later than the required beginning date; or (ii) must 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) provides that when an employee dies before distributions have begun under subparagraph (A)(ii), the entire portion of such interest will be distributed within five years after the death of such employee.

Section 401(a)(9)(B)(iii) provides an exception to section 401(a)(9)(B)(ii) under which, if any portion of an employee’s benefit is payable to a designated beneficiary, the portion will be distributed over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), provided such distributions begin no later than one year after the employee’s death or such later date as the Secretary may prescribe by regulations.

Section 401(a)(9)(C)(i) provides that “required beginning date” means April 1 of the calendar year following the later of (I) the calendar year in which the employee turns age 70½, or (II) the calendar year in which the employee retires.

Section 401(a)(9)(E) provides that “designated beneficiary” means any individual designated as a beneficiary by the employee.

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

Section 1.401(a)(9)-4, Q&A-5, provides that beneficiaries of a trust with respect to the trust's interest in an employee's benefit (and not the trust itself) will be treated as having been designated as beneficiaries for purposes of determining the applicable distribution period if certain requirements are met. The requirements are that (1) the trust is a valid trust under state law; (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 employee's benefit are identifiable from the trust instrument; and (4) certain documentation has been provided to the plan administrator.

Section 1.401(a)(9)-4, Q&A-6, provides that in order to satisfy the fourth requirement of section 1.401(a)(9)-4, Q&A-5, the trustee of the trust must provide certain documentation (such as a copy of the actual trust document of the trust that is the named beneficiary) by October 31 of the calendar year immediately following the calendar year in which the employee died.

Section 1.401(a)(9)-5, Q&A-1, provides that the amount required to be distributed for each calendar year is equal to the amount of the account divided by the applicable distribution period.

Section 1.401(a)(9)-5, Q&A-5, provides that, if an employee dies before distributions have begun, the applicable distribution period is based on the life expectancy of the designated beneficiary.

Section 1.401(a)(9)-5, Q&A-7(a), provides that if an employee has more than one individual that 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)-5, Q&A-7(b), provides that a contingent beneficiary (one whose entitlement to an employee's benefit after the employee's death is a contingent right) is considered a beneficiary for purposes of determining the designated beneficiary with the shortest life expectancy and whether a person other than an individual is a beneficiary, except as provided in section 1.401(a)(9)-5, Q&A-7(c)(1).

Section 1.401(a)(9)-5, Q&A-7(c)(1), provides that for purposes of determining the beneficiary with the shortest life expectancy or whether a person other than an individual is a beneficiary, a person will not be considered a beneficiary merely because that person could become the successor to the interest of one of the employee's beneficiaries after that beneficiary's death. However, this exception does not apply to a person who has any right (including a contingent right) to an employee's benefit beyond being a mere potential successor to the interest of one of the employee's beneficiaries upon that beneficiary's death. For example, if the first beneficiary has a right to all income with respect to an employee's individual account during that beneficiary's life and a second beneficiary has a right to the principal but only after the death of the first income beneficiary (any portion of the principal distributed during the life of the first income beneficiary to be held in trust until that first beneficiary's death), both beneficiaries must be taken into account in determining the beneficiary with the shortest life expectancy and whether only individuals are beneficiaries.

The Further Consolidated Appropriations Act, 2020, P. L. 116-94 (the Act), was enacted on December 20, 2019. Division O of the Act, titled "Setting Every Community Up for Retirement Enhancement Act of 2019" (SECURE Act), amended section 401(a)(9) with respect to individuals who die after December 31, 2019. The amended provisions do not apply in this case because Decedent died before the applicability date of the SECURE Act amendments.

With respect to your first ruling request, based on your representations, Trust meets the four requirements of section 1.401(a)(9)-4, Q&A-5. As a result, the beneficiaries of Trust are treated as designated beneficiaries of Decedent's IRAs for purposes of determining the applicable distribution period under section 401(a)(9).

With respect to your second ruling request, Spouse, Individual A, and Individual B are the only beneficiaries taken into account for purposes of determining the applicable distribution period. Spouse is taken into account as a designated beneficiary because he is entitled to receive distributions of income and principal from Subtrust during his lifetime and is able to require the trustee to distribute to him as much of Subtrust's

assets as he demands. Individual A and Individual B are designated beneficiaries because they are entitled to any remaining Subtrust assets upon Spouse's death. All other potential recipients of the funds in Subtrust are mere successor beneficiaries within the meaning of the regulations.

Spouse has the shortest life expectancy of the designated beneficiaries taken into account in determining the applicable distribution period. Accordingly, the applicable distribution period for calculating the required minimum distributions from Decedent's IRAs is based on Spouse's life expectancy.

#### Rulings

- 1) The beneficiaries of Trust will be treated as designated beneficiaries of Decedent's IRAs for purposes of determining the applicable distribution period under section 401(a)(9).
- 2) Pursuant to the provisions of section 1.401(a)(9)-4, Q&A-5, the applicable distribution period for Decedent's IRAs will be calculated based on the life expectancy of Spouse.

This letter ruling expresses no opinion on the property rights of the parties under state law, and only provides rulings on the impact of federal tax law on the specific facts presented. This letter ruling assumes that Decedent's IRAs satisfy the requirements of section 408 at all relevant times.

The rulings contained in this letter are based upon information and representations submitted on behalf of Trust and accompanied by a penalties of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2020-1, 2020-1 I.R.B. 1, § 7.01(16)(b). This office has not verified any of the material submitted in support of the request for a letter ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2020-1, § 11.05.

Except as expressly provided above, no opinion is expressed or implied concerning the federal income tax consequences of any other aspects of any transaction or item of income described in this letter ruling.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited by others as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,

John T. Ricotta  
Branch Chief  
Qualified Plans Branch 3  
Office of Associate Chief Counsel  
Employee Benefits, Exempt  
Organizations, and Employment  
Taxes

cc: