

200440031



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 6 2004

UICs: 401.06-00
401.06-02

T:EP:RA:T3

LEGEND:

Taxpayer A:

Trustee B:

Individual C:

Individual D:

Individual E:

Individual F:

Individual G:

Trust T:

Subtrust U:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Date 8:

Date 9:

Date 10:

Date 11:

Date 12:

Plan X:

Plan W:

Corporation Z:

State N:

County O:

Dear _____ :

This is in response to the _____, request for letter rulings under section 401(a)(9) of the Internal Revenue Code submitted on your behalf by your authorized representative as supplemented by correspondence dated _____, _____, and _____. The request for letter rulings is based on the following facts and representations.

Taxpayer A, whose date of birth was Date 1, 1941, died on Date 2, _____, at age _____. As of his date of death, Taxpayer A was a participant in Plan X and in Plan W. At his death, Taxpayer A was a resident of State N.

Taxpayer A had two sons: Individual F and Individual G.

On or about Date 5, _____, Taxpayer A named Trust T as the beneficiary of his interest in Plan X. On or about Date 6, _____, Taxpayer A named Trust T as the beneficiary of his interest in Plan W. At his death, Corporation Z was the administrator of Plans X and W.

Trust T was created by Taxpayer A, as grantor and trustor, on Date 3, 1997. Pursuant to section 1.3 of Trust T, on Date 4, , Trust T was amended by the "First Amendment to Trust T". Your authorized representative has asserted that Trust T is valid under the laws of State N.

Section 1.4 of Trust T provides that Trust T became irrevocable at the death of Taxpayer A.

Trustee B is the trustee of Trust T.

Section 4.3(e) of the First Amendment to Trust T creates Subtrust U. Section 4.3 (e) of Trust T provides, in relevant part, upon the death of Taxpayer A, all of the proceeds of any qualified plan shall be held for the Descendants of Taxpayer A as set forth in section 4.3(e). Section 4.3(e)(1) of Trust T defines "descendants as the children and issue of Individual F and Individual G. Said issue are: Individual C whose date of birth was Date 7, , Individual D whose date of birth was Date 8, and Individual E whose date of birth was Date 9, Individual C is the eldest of Individuals C, D, and E.

Section 4.3(e) of the First Amendment to Trust T provides that distributions shall be made primarily to or for the benefit of the children or issue of Individuals F and G, who are Individuals C, D, and E. The assets of Trust T/Subtrust U are to be used for the post-secondary education of Individuals C, D, and E during the term of Trust T, and for certain other enumerated needs. On the date which is 30 years from the date of Taxpayer A's death, Trust T is to terminate and the remaining corpus of Trust T/Subtrust U is to be distributed to the then living grandchildren of Taxpayer A, who have either graduated or are making satisfactory progress in school at the time of Trust T's termination. Section 4.4 of Trust T provides that, upon the death of all of Taxpayer A's children and grandchildren, Trust T shall terminate upon the death of the last of them to die, and Trust T shall be distributed in equal shares to Taxpayer A's lineal descendants by right of representation (excluding, however, Taxpayer A's sons, Individuals F and G). Accordingly, under the provisions of Trust T, Individuals C, D, and E are the eldest named beneficiaries of Taxpayer A's interests in Plans X and W, of whom, as noted above, Individual C is the eldest.

Section 8.7(v) of Trust T provides that the Trustee is authorized, at any time or from time to time after the death of Taxpayer A, "in his sole and absolute discretion to pay from the assets of the trust which are included in Taxpayer A's gross estate for federal estate tax purposes, all or any part of the last illness, funeral, and burial expenses of such deceased Taxpayer A, taxes imposed upon said Taxpayer A's taxable estate, costs of administration of the proportionate

share for the decedent Taxpayer A's probate estate including, without limitation, personal representatives and attorneys' fees, irrespective of the size, condition or nature of said probate estate".

On Date 10, _____, a probate estate was opened and Trustee B was appointed by the County O, State N, Superior Court, as the personal representative of Taxpayer A's estate. Your authorized representative asserts that the probate estate was insolvent and had been insolvent since Taxpayer A's death. In light of said insolvency, and in order to complete the administration of Taxpayer A's probate estate, on Date 11, _____, Trustee B, as personal representative, filed a Petition for approval of Accounting and for Decree of Settlement and Distribution with the Probate Court. The Petition requested that Trust T pay approximately 2/3 of Taxpayer A's estate's administration expenses and estate taxes. Subsequently, a bank creditor filed an objection to the Petition and asserted that Trust T should pay all of the debts and expenses of Taxpayer A's estate. On or about Date 12, _____, the bank creditor's objection to the Petition was settled.

Section 33-1126C of the Revised Statutes of State N provides that "Any money or other assets payable to a participant in or beneficiary of, or any interest of any participant in or beneficiary in, a retirement plan under section 401(a), 403(a), 403(b), 408, 408a (sic) or 409 or a deferred compensation plan under section 457 of the United States Internal Revenue Code of 1986, as amended, shall be exempt from any and all claims of creditors of the beneficiary or participant". Section 1126C contains several exceptions to the general rule which are not pertinent to this ruling request.

Your authorized representative asserts that the argument presented in the Probate Court as to why Section 33-1126C of the Revised Statutes of State N, which the Court recognized, would not apply to Trust T was that, since Taxpayer A's estate was insolvent, Trust T had to bear responsibility for the payment of taxes and expenses. The bank creditor also argued that Section 33-1126C of the Revised Statutes of State N only protected qualified plan assets when they remained in the plan. In this case, the Statute's protection ceased once the assets were distributed from Plan X to Trust T. In short, the Court relied upon the insolvency of taxpayer A's estate and State N law in ordering Trust T to pay taxes and expenses.

Your authorized representative has asserted that, since calendar year _____ distributions intended to meet the requirements of Code § 401(a)(9) have been made from Plans X and W to Trust T over the life expectancy of Individual C.

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

1. That, for purposes of Code section 401(a)(9), distributions from Plan X may be made to Trust T over the life expectancy of Individual C, the eldest of Individuals C, D, and E, the beneficiaries of Trust T; and
2. that for purposes of Code section 401(a)(9), distributions from Plan W may be made to Trust T over the life expectancy of Individual C, the eldest of Individuals C, D, and E, the beneficiaries of Trust T.

With respect to your ruling requests, 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 § 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 § 401(a)(9)(B)(iii) provides, in general, that 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).

Code § 401(a)(9)(C) 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 employee attains age 70 1/2.

With respect to your ruling requests, "Final" Income Tax Regulations under Code sections 401(a)(9) and 408(a)(6) were published in the Federal Register at 67 Federal Register 18987-19028 (April 17, 2002), and in the Internal Revenue Bulletin at 2002-19 I.R.B. 852 (May 13, 2002). The Preamble to the "Final" Regulations, in relevant part, provide that the regulations apply for determining required minimum distributions for calendar years beginning after January 1, 2003. For determining required distributions for calendar year taxpayers may rely on the 1987 proposed regulations, the 2001 proposed regulations, or the "Final" Regulations.

Section 1.401(a)(9)-3 of the "Final" regulations, Q&A-3(a) provides, in general, that, with respect to the life expectancy exception to the 5-year rule described in Code § 401(a)(9)(B)(iii), 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.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-5(b), provides, in general, that if an employee dies before his required beginning date, in order to satisfy the requirements of Code § 401(a)(9)(B)(iii) or (iv) and the life expectancy rule described in A-1 of § 1.401(a)(9)-3, the applicable distribution period for distribution calendar years after the distribution calendar year containing the employee's date of death is determined in accordance with paragraph (c) of this A-5.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-5(c)(1), 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)-4 of the "Final" regulations, Q&A-1, 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. 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 takes under a plan.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-7(a) provides, in summary, 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 named beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the applicable distribution period.

Section 1.401(a)(9)-4 of the "Final" 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 death.

Section 1.401(a)(9)-4 of the "Final" 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, may not be a designated beneficiary. However, Q&A-5 of section 1.401(a)(9)-4 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 that there is no corpus.

(2) The trust is irrevocable or the trust contains language to the effect it becomes 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) The documentation described in A-6 of this section has been provided to the plan administrator.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-6(b), provides, generally, with respect to required minimum distributions after the death of the employee, that documentation described therein must be provided by the trustee of the trust/beneficiary to the plan administrator by October 31 of the calendar year following the calendar year in which the employee died.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-5(c), provides, in relevant part, that the separate account rules under A-2 of § 1.401(a)(9)-8 are not

available to beneficiaries of a trust with respect to the trust's interest in the employee's benefit.

As previously noted, taxpayers must compute minimum required distributions for calendar years beginning with calendar year 2003 in accordance with the "Final" regulations referenced above.

As noted above, if distributions are made to a trust, even if the trust is a "see-through" trust within the meaning of Q&A-5 of §1.401(a)(9)-4 of the "Final" Regulations, the separate account rules of A-2 of § 1.401(a)(9)-8 of the "Final Regulations" are not available to the beneficiaries of the trust. Thus, in general, each beneficiary of a trust must receive minimum required distributions over the life expectancy of the eldest beneficiary.

For purposes of determining which trust beneficiary's life expectancy will be used to determine the minimum required distribution payout period, the term "beneficiary", in general, includes individuals or entities who are not eligible to be treated as "designated beneficiaries" within the meaning of Code section 401(a)(9).

The issue raised in this ruling request is which Trust T beneficiaries must be considered in determining who is the designated beneficiary of certain qualified plans where distributions from the plans are made to a trust of which specific provisions authorize the payment of taxes, administrative and funeral expenses from trust assets and where plan assets are, in fact, used to pay said taxes and expenses.

In this case, distributions from Plans X and W are being made directly to Trust T. The named beneficiaries of Trust T are numerous individuals of whom Individual C is the eldest beneficiary. Furthermore, although the provisions of Trust T authorize the payment of funeral, burial and administrative expenses associated with the death of Taxpayer A, the above referenced State N statute protects qualified plan assets against being used to pay said expenses.

As noted above, in spite of Section 33-1126C of the Revised Statutes of State N, the County O, State N, Superior Court required Trust T assets, including amounts distributed from Plan X and Plan W be used to pay expenses associated with the probate of Taxpayer A's estate. As also noted above, although the County O, State N, Superior Court recognized the applicability of said Statute, it concluded that its applicability would cease in this case once distributions from Plans X and W were made to Trust T because no other assets existed to defray probate expenses.

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Thus, with respect to this ruling request, based on the facts of this case which required the County O, State N, Superior Court to order Plan X and Plan W assets be used to pay estate expenses, we will not treat the creditors referenced in section 8.7(v) of Trust T as potential beneficiaries for purposes of Code section 401(a)(9).

Thus, based on the specific facts and representations surrounding this ruling request, we conclude as follows:

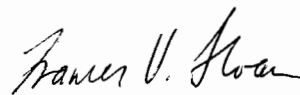
1. That, for purposes of Code § 401(a)(9), distributions from Plan X may be made to Trust T over the life expectancy of Individual C, the eldest of Individuals C, D, and E, the beneficiaries of Trust T; and
2. that for purposes of Code § 401(a)(9), distributions from Plan W may be made to Trust T over the life expectancy of Individual C, the eldest of said Individuals C, D, and E, the beneficiaries of Trust T.

This ruling letter is based on the assumption that Plans X and W either have met, are meeting, or will meet the requirements of Code § 401(a) at all times relevant thereto. It also assumes that Trust T, and Subtrust U created thereunder, are valid under the laws of State N as represented.

Pursuant to a power of attorney on file with this office, a copy 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(j)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,



Frances V. Sloan
Manager, Employee Plans
Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose