200634068

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR - 5 2006

UICs: 401.06-00
401.06-02

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Taxpayer D:

Taxpayer E:

Taxpayer F:

Company M:

IRA X:

Trust T:

Subtrust U:

Subtrust V:

Subtrust W:

State U:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Date 8:

Date 9:

Amount 1:

Gentlemen:

This is in response to the , letter, as supplemented, in which your authorized representative, on your behalf, requests several rulings under section 408 of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 7, 1936, died on Date 1, 2003, without having attained age 70 ½. His wife, Taxpayer B, predeceased him having died on Date 2, 2003. At his death, Taxpayer A was a resident of State U.

Taxpayer A was survived by his son, Taxpayer C, whose date of birth was Date 4, 1962, by a grandson, Taxpayer D, whose date of birth was Date 5, 1991, and by another grandson, Taxpayer E, whose date of birth was Date 6, 1993. Thus, Taxpayer C is the eldest of Taxpayers C, D, and E.

At his death, Taxpayer A maintained an individual retirement account ("IRA"), IRA X, with Company M. It has been represented that IRA X was/is qualified within the meaning of section 408(a) of the Code. By means of a beneficiary designation dated Date 8, 1999, Taxpayer A named Taxpayer B as the primary beneficiary of his IRA X, and named Trust T as the secondary beneficiary of his IRA X. It has been represented that Trust T was/is valid under the laws of State U. Furthermore, section 2.3(a) of Trust T provides that only Taxpayer A had the power to revoke said trust.

As noted above, Taxpayer B predeceased Taxpayer A; thus, IRA X passed to Trust T. It has also been represented that, as of the date of Taxpayer A's death, Trust T remained the beneficiary of Taxpayer A's IRA X. Taxpayer C and Taxpayer F are the co-trustees of Trust T.

As of Taxpayer A's date of death, the value of IRA X approximated Amount 1.

It has been represented that, as of September 30, 2004, all of the debts, expenses and taxes associated with the death of Taxpayer A and with the administration of Taxpayer A's estate had been paid.

Relevant provisions of Trust T established Subtrust U to benefit Taxpayer C; Subtrust V to benefit Taxpayer D; and Subtrust W to benefit Taxpayer E. Relevant provisions of Trust T provide that 2/3 of the trust assets shall be paid to Subtrust U; 1/6 to Subtrust V; and 1/6 to Subtrust W. It has been represented that said provisions apply to Taxpayer A's IRA X. It has also been represented that Sub-trusts U, V, and W are valid under the laws of State U. Finally, it has been represented that a copy of Trust T, as amended, was provided to Company M prior on Date 9, 2003.

Sections 3.6 and 3.7 of Trust T, as amended, govern Sub-trusts U, V, and W. Pursuant to said sections of Trust T, Taxpayers C, D, and E are the sole individuals who can receive distributions from Taxpayer A's IRA X.

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

1. That, as represented above, IRA X is a valid IRA within the meaning of Code section 408(a); thus, distributions from said IRA X are subject to the rules of Code section 408(a)(6);

2. that Trust T, as amended, and Subtrusts U, V, and W constitute valid "See-Through" trusts within the meaning of section 1.401(a)(9) of the "Final" Income Tax Regulations;

3. that Taxpayers C, D, and E, are the sole individuals whose life-expectancies must be considered for purposes of determining who, if anyone, is the Code section 401(a)(9) "designated beneficiary" of Taxpayer A's IRA X; and

4. that Subtrust V, is eligible for "separate share treatment", as that term is defined in section 1.401(a)(9) of the "Final" regulations. Thus, as a result, the beneficiary of such subtrust, Taxpayer D, may compute his Code section 401(a)(9) minimum required distributions based on his life expectancy without regard to the life expectancy of the beneficiary of either of the other two subtrusts.

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.

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)(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).

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)(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.

With further 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[.]

In addition, the "Final" Regulations have been modified in part (See 2004-26 I.R.B. 1082, 1098 (June 28, 2004)). The modification to the "Final" Regulations may also be relied upon with respect to required distributions for the 2003 and subsequent calendar years.

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 section 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. 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 of the "Final" regulations, Q&A-4(a), 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)-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 section 401(a)(9)(B)(iii) or (iv) and the life expectancy rule described in A-1 of section 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. 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 takes under a plan.

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 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. Consequently, any person who was a beneficiary as of the date of the employee's death, but is not a beneficiary as of that September 30 (e.g. because the person receives the entire benefit to which the person is entitled before that September 30) is not taken into account in determining the employee's designated beneficiary for purposes of determining the distribution period for required minimum distributions after the employee's death. Accordingly, if a person disclaims entitlement to the employee's benefit pursuant to a disclaimer that satisfies section 2518 by that September 30 thereby allowing other beneficiaries to receive the benefits in lieu of that person, the disclaiming person is not taken into account in determining the employee's designated beneficiary.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-7(a) 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)-8 of the "Final" regulations, Q&A-2(a)(2) provides that, if an employee's/IRA holder's benefit in a defined contribution plan is divided into "separate accounts" in accordance with the conditions contained therein, distributions into 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)-5 of the "Final" regulations, Q&A-7(b) provides, in short, that except as provided in paragraph (c)(1) of this A-7, if a beneficiary's entitlement to an employee's benefit after the employee's death is a contingent right, such contingent beneficiary is nevertheless considered to be a beneficiary for purposes of determining who, if anyone, is the employee's designated beneficiary.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-7(c) 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 beneficiaries 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)-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 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)-5 of the "Final" regulations, Q&A-5(c), 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 of the "Final" Regulations, Q&A-6(b), 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)-9 of the "Final" Regulations, Q&A-1, sets forth the "Single Life Table" to be used to determine the life expectancy of an individual. The "Single Life Table" indicates that the life expectancy of a 42-year old is 41.7 years.

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.

With specific reference to your first ruling request, it has been represented that IRA X is, and has been at all times relevant to this ruling request, valid within the meaning of Code section 408(a). Additionally, with specific reference to your second ruling request, it has been represented that Trust T, and the sub-trusts created under its terms, are valid under the laws of State U and became irrevocable at the death of Taxpayer A. Furthermore, it has been represented that a copy of the documentation required under the "Final" Regulations promulgated under Code section 401(a)(9) was timely given to the custodian of IRA X. Finally, the identity of the beneficiaries of Trust T may be determined by perusing its terms.

Thus, in response to your initial two ruling requests, we conclude as follows:

1. That, as represented above, IRA X is a valid IRA within the meaning of Code section 408(a); thus, distributions from said IRA X are subject to the rules of Code section 408(a)(6); and

2. That Trust T, as amended, and Subtrusts U, V, and W constitute qualified "See-Through Trusts" within the meaning of section 1.401(a)(9)-4 of the "Final" Income Tax Regulations, Question and Answer-5.

With respect to your third and fourth ruling requests, since Trust T, and its sub-trusts, constitute valid "See-Through Trusts", it is necessary to determine who, if anyone, is the designated beneficiary, within the meaning of Code sections 401(a)(9) and 408(a)(6), of Taxpayer A's IRA X. In this regard, we note that IRA X is initially payable to Trust T prior to being divided among the beneficiaries of the three subtrusts created under the provisions of Trust T.

As noted above, Taxpayers C, D and E are the only beneficiaries of Trust T's subtrusts who will receive the amounts distributed from Taxpayer A's IRA X, and the only beneficiaries who must be considered for purposes of determining who is the designated beneficiary, within the meaning of Code section 401(a)(9), of IRA X. As noted previously, Taxpayer C is older than either Taxpayer D or Taxpayer E.

Thus, with respect to your third and fourth ruling requests, based on the above, we conclude as follows:

3. that Taxpayers C, D, and E, are the sole individuals whose life-expectancies must be considered for purposes of determining who, if anyone, is the Code section 401(a)(9) "designated beneficiary" of Taxpayer A's IRA X; and

4. since distributions from Taxpayer A's IRA X will be made to Taxpayer A's Trust T prior to being distributed to Taxpayer D, distributions from IRA X are not eligible for "separate share" treatment as provided in Section 1.401(a)(9)-8 of the "Final" regulations, Q&A-2(a)(2). Thus, Code section 401(a)(9) minimum required distributions to Subtrust V, referenced herein, and the beneficiary of such, Taxpayer D, must be calculated based on the life expectancy of Taxpayer C, the eldest of Taxpayers C, D, and E. using the Single Life Table found in the "Final" regulations.

This ruling letter is based on the assumption that IRA X meets the requirements of Code section 408(a) at all times relevant to. Furthermore, this ruling letter rests on the assumption that Trust T, and its related sub-trusts, are valid under the laws of State U as represented. It also assumes the correctness of all facts and representations contained therein.

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

If you have any questions concerning this letter ruling, please contact , Esquire (ID:) who may be reached at (not a toll-free number) or (FAX).

Sincerely yours,

Frances V Sloan

Frances V. Sloan, Manager,
Employee Plans Technical Group 3

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