200750019

Department of the Treasury
Internal Revenue Service
Washington, D.C. 20024

Uniform Issue List: 408.08-00

SEP 14 2007

Legend:

Individual A =

Trust A =

Individual B =

State C =

Company M =

Company N =

Section =

Statutes X =

Dear :

This is in response to a request for a letter ruling, submitted on behalf of Trust A by its authorized representative in correspondence dated November 15, 2006, as supplemented by correspondence dated March 15 and August 3, 16, and 31, 2007, and a telephone conversation on September 6, 2007, under section 408(d) of the Internal Revenue Code (Code).

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

Individual A, whose date of birth was , 1929, died on December 18, 2005 at age 76. Individual A's spouse predeceased her on December 26, . Individual A was survived by three daughters, including Individual B, all of whom were alive as of the date of this ruling request.

On April 3, , Individual A established Trust A, which has not been amended, revoked or otherwise changed since that date. Section First, paragraph B of Trust A provides that the Trust was revocable by Individual A; thus, at the death of Individual A, Trust A became irrevocable. Individual A's three daughters are the trustees of Trust A. Trust A is valid under the laws of State C, wherein Individual A resided on the date of her death.

It has been represented that Section of Statutes X exempts an individual retirement arrangement (IRA) from any and all claims against a decedent.

As of December 18, 2005, Individual A was the owner of two IRAs, one maintained with Company M and the other maintained with Company N. By means of a beneficiary designation dated January 29, , Trust A was named the beneficiary of Individual A's IRA maintained with Company M. By means of a beneficiary designation dated May 29, , Trust A was named the beneficiary of Individual A's IRA maintained with Company N.

Company M, the custodian of one IRA, has been provided with information concerning the terms of Trust A and the identities of the beneficiaries thereof. Company N, the custodian of the other IRA, has also been provided with information concerning the terms of Trust A and the identities of the beneficiaries thereof. Both Company M and Company N were provided with this information prior to October 31, 2006.

Section Third, paragraphs A through C, of Trust A provides that at the death of Individual A, the balance of the Trust A assets, including the IRAs, was to be held in trust for the beneficiaries, Individual A's three daughters. Pursuant to the terms of Trust A, Individual B would receive 40 percent of the assets, another daughter would receive 40 percent of the assets, and the third daughter would receive 20 percent of the assets. The language of Trust A contains no conditions limiting the payment of the IRA assets held in Trust A to the three daughters.

The co-trustees of Trust A propose to divide the Company M and Company N IRAs, by means of trustee-to-trustee transfers, into six distinct IRAs, each for the separate benefit of the named daughter. Each transferee IRA will be maintained in the name of Individual A (deceased). For example, one transferee Company M IRA and one transferee Company N IRA will be maintained in the name of Individual A (deceased) for the benefit of Individual B, beneficiary thereof, as a result of being named such under Trust A. Distributions from each of these transferee IRAs will be made over the life expectancy of the eldest of the three beneficiary-daughters of the IRAs.

Your authorized representative has asserted that the funds in both IRAs have not been distributed except for required minimum distributions intended to meet the requirements of section 401(a)(9) of the Code. In 2006, subsequent to the death of Individual A, the required minimum distributions were paid to Trust A.

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

1. The beneficiary IRAs created by means of trustee-to-trustee transfers, which will be titled "Individual A (deceased) fbo Individual B", constitute inherited IRAs as that term is defined in section 408(d)(3)(C) of the Code.

2. The creation of the above-referenced IRAs for the benefit of Individual B, by means of trustee-to-trustee transfers as provided in Revenue Ruling 78-406, shall not constitute taxable distributions or payments, as those terms are defined for purposes of section 408(d)(1) of the Code, to Individual B, nor will they be considered attempted rollovers of the IRAs to Individual B.

3. The IRA created by a trustee-to-trustee transfer of a portion of the IRA maintained by Individual A at her death with Company M to an IRA set up in the name of Individual A to benefit Individual B, may be maintained separately from the IRA created by a trustee-to-trustee transfer of a portion of the IRA maintained by Individual A at her death with Company N to an IRA set up in the name of Individual A to benefit Individual B, for purposes of determining the required minimum distributions under section 401(a)(9) of the Code.

4. The minimum distribution requirements under section 401(a)(9) of the Code concerning the IRAs created by trustee-to-trustee transfers for the benefit of Individual B may be met by distributing amounts annually from each distinct IRA created for the benefit of Individual B, computed using the remaining life expectancy of the eldest daughter-beneficiary utilizing the Single Life Expectancy Table provided at section 1.401(a)(9)-9, Question & Answer-1 of the Income Tax Regulations (regulations), beginning with the calendar year 2007. For each year after calendar year 2007, the life expectancy for 2007 is reduced by one in accordance with section 1.401(a)(9)-5, Q & A-5(c)(1) of the regulations.

With respect to your ruling requests, section 408(a)(6) of the Code 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 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)(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 ½.

Section 401(a)(9)(B)(i) of the Code provides, in general, that if a plan participant (IRA holder) dies after the distribution of his interest has begun in accordance with subparagraph (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 under subparagraph (A)(ii) as of the date of death.

Final regulations under section 401(a)(9) and 408(a)(6) of the Code 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 regulations, in relevant part, provides that the regulations apply for determining required minimum distributions for calendar years beginning after January 1, 2003.

Section 1.401(a)(9)-4 of the regulations, Q & A-4, provides, in pertinent part, that in order to be a designated beneficiary, an individual must be a beneficiary as of the date of the IRA holder's death.

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) of the Code. A person who is not an individual, such as an employee's estate, may not be a designated beneficiary. Further, section 1.401(a)(9)-4, Q & A-5(a) provides, in pertinent part, that a trust is not a designated beneficiary even if the trust is named as a beneficiary. Consequently, Trust A is not a designated beneficiary of Individual A's IRAs even though Trust A was named by Individual A as the beneficiary of her IRAs.

However, section 1.401(a)(9)-4, Q & A-5(a) of the regulations further provides that if the requirements of paragraph (b) of Q & A-5 are met, and the required documentation as described in Q & A-6(b) is provided to the plan administrator by the trustee of the trust, the beneficiaries of the trust will be treated as having been designated as beneficiaries of the employee under the plan for purposes of Code section 401(a)(9). If these requirements are met, the trust is a "see-through" trust and is a named beneficiary of the IRA as of the date of the IRA owner's death, and the beneficiaries of the trust, with respect to the trust's interest in the IRA, may be considered designated beneficiaries for purposes of determining the distribution period for payment of benefits from the IRA under section 401(a)(9) of the Code. 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 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, 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(a) of the regulations provides, in summary, that if an employee dies on or after his required beginning date, the applicable distribution period for distribution calendar years after the distribution calendar year containing the

employee's date of death is either—(1) if the employee has a designated beneficiary as of the date determined under A-4 of section 1.401(a)(9)-4, the longer of—

(i) the remaining life expectancy of the employee's designated beneficiary determined in accordance with paragraph (c)(1) or (2) of this A-5; and

(ii) the remaining life expectancy of the employee determined in accordance with paragraph (c)(3) of this A-5.

Section 1.401(a)(9)-5, Q & A-5(c)(1) of the regulations provides, in general, that with respect to an employee who has a non-spouse designated 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 years, the applicable distribution 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 of the regulations provides, in general, that if more than one beneficiary is designated as a beneficiary by an employee as of the applicable date for determining the designated beneficiary under A-4 of section 1.401(a)(9)-4, the beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining required distributions.

Section 1.401(a)(9)-9, Q & A-1 of the regulations provides the relevant Single Life Expectancy Table.

Section 1.401(a)(9)-8, Q & A-2(a) of the regulations provides the "separate account" rules with respect to defined contribution plans. A "separate account" is an account under which the beneficiary or beneficiaries differ from the beneficiary or beneficiaries of the other accounts. In general, if separate accounts are set up, for years subsequent to the calendar year containing the date on which the separate accounts were established, or the date of death if later, a separate account under a plan is not aggregated with the other separate accounts under the plan in order to determine whether the distributions from such separate account satisfy the requirements of section 401(a)(9) of the Code. Instead, the rules in section 401(a)(9) apply separately to each separate account under the plan.

Section 1.401(a)(9)-8, Q & A-3 of the regulations provides that a separate account is a separate portion of an employee's benefit reflecting the separate interest of the employee's beneficiaries under the plan as of the date of the employee's death for which separate accounting is maintained. The separate accounting must allocate all post-death investment gains and losses, contributions, and forfeitures, for the period prior to the establishment of the separate accounts, on a pro-rata basis in a consistent and reasonable manner among the separate accounts.

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

Section 408(d)(1) of the Code provides, generally, that in accordance with the rules of section 72, amounts paid or distributed from an IRA are included in gross income by the payee or distributee.

Section 408(d)(3)(C) of the Code provides, in general, 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 said IRA by reason of the death of another if the acquiring individual is not the surviving spouse of said other individual. In this case, as noted above, Individual B is Individual A's daughter.

Revenue Ruling 78-406, 1978-2 C.B. 157 provides that the direct transfer of funds from one IRA trustee to another IRA trustee, even if at the behest of the IRA holder, does not constitute a payment or distribution to a participant, payee, or distributee as those terms are used in Code section 408(d). Furthermore, such a transfer does not constitute a rollover distribution.

Revenue Ruling 78-406 is applicable if the trustee-to-trustee transfer is directed by the beneficiary of an IRA after the death of the IRA owner as long as the transferee IRA is set up and maintained in the name of the deceased IRA owner for the benefit of the beneficiary. The beneficiary accomplishing such a post-death trustee-to-trustee transfer need not be the surviving spouse of a deceased IRA holder.

The issue raised in this ruling request is whether a beneficiary-daughter of an IRA holder may, after the death of the IRA holder, transfer her 40 percent interest in the deceased's IRAs to IRAs set up to solely benefit her, and whether she may receive distributions from her beneficiary IRAs without regard to the distribution decisions made by the other IRA beneficiaries.

Although neither the Code nor the regulations promulgated under section 401(a)(9) of the Code preclude the posthumous division of the Company M IRA into more than one IRA or the Company N IRA into more than one IRA, the regulations do preclude separate account treatment for Code section 401(a)(9) purposes where amounts pass through a trust.

Additionally, a trustee-to-trustee transfer, as described in Revenue Ruling 78-406, does not constitute a distribution or payment as those terms are defined for purposes of section 408(d) of the Code. Thus, such a transfer may be accomplished by the beneficiary of an IRA of a deceased individual. Furthermore, a trustee-to-trustee transfer from one IRA to another may be accomplished after the date of death of an IRA owner by a beneficiary of said IRA owner as long as the transferee IRA account remains in the name of the decedent for the benefit of the beneficiary.

In this case, Trust A was the named beneficiary of Individual A's IRAs maintained with Companies M and N. Trust A was established by Individual A, was valid under the laws of State C, and became irrevocable at the death of Individual A. In addition, relevant documentation relating to Trust A's status as beneficiary of Individual A's interest in the IRAs maintained by Companies M and N was given to the IRA administrators by the date required under the regulations. Furthermore, the Service notes that the identity of each person entitled to receive any portion of Individual A's interest in the IRAs upon her death is determinable by perusing the provisions of Trust A. The beneficiaries of Trust A were Individual B and her two sisters, who were all daughters of Individual A.

Individual B intends to accomplish trustee-to-trustee transfers of her interest in Individual A's IRAs. Such transfers will be into IRAs established and maintained in the name of Individual A to benefit Individual B.

The regulations cited above provide that only individuals may qualify as designated beneficiaries for purposes of section 401(a)(9) of the Code; thus, trusts were ineligible to qualify as such. Of the Trust A beneficiaries, one of the daughters other than Individual B has the shortest life expectancy.

As noted above, the separate account rules of section 1.401(a)(9)-8, Q & A-2(a) of the regulations do not apply to amounts passing through a trust. Thus, the required minimum distributions from any IRAs created by trustee-to-trustee transfers from Trust A on behalf of Individual B, irrespective of her age, must be based on the life expectancy of the eldest beneficiary-daughter. In this case, the Table to be used to determine required minimum distributions is found at section 1.401(a)(9)-9, Q & A-1 of the regulations. Furthermore, the applicable distribution period must be computed in accordance with section 1.401(a)(9)-5, Q & A-5(c)(1) of the regulations.

Therefore, with respect to your ruling requests, we conclude as follows:

1. The beneficiary IRAs created by means of trustee-to-trustee transfers, which will be titled "Individual A (deceased) fbo Individual B", constitute inherited IRAs as that term is defined in section 408(d)(3)(C) of the Code.

2. The creation of the above-referenced IRAs for the benefit of Individual B, by means of trustee-to-trustee transfers as provided in Revenue Ruling 78-406, shall not constitute taxable distributions or payments, as those terms are defined for purposes of section 408(d)(1) of the Code, to Individual B, nor will they be considered attempted rollovers of the IRAs to Individual B.

3. The IRA created by a trustee-to-trustee transfer of a portion of the IRA maintained by Individual A at her death with Company M to an IRA set up in the name of Individual A to benefit Individual B, may be maintained separately from the IRA created by a trustee-to-trustee transfer of a portion of the IRA maintained by Individual A at her death with Company N to an IRA set up in the name of Individual A to benefit Individual B, for purposes of determining the required minimum distributions under section 401(a)(9) of the Code.

4. The minimum distribution requirements under section 401(a)(9) of the Code concerning the IRAs created by trustee-to-trustee transfers on behalf of Individual B may be met by distributing amounts annually from each distinct IRA created for the benefit of Individual B, calculating the remaining life expectancy using the age of the eldest daughter-beneficiary and the Single Life Expectancy Table provided at section 1.401(a)(9)-9, Q & A-1 of the regulations, beginning with the calendar year 2007, reduced by one for each subsequent calendar year in accordance with section 1.401(a)(9)-5, Q & A-5(c)(1) of the regulations.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter assumes that Individual A's IRAs are and were qualified under section 408 of the Code at all times relevant thereto. It also assumes that the transferee IRAs to be set up by Individual B will also meet the requirements of section 408 at all times relevant thereto.

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 a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative. If you wish to inquire about this ruling, please contact , I.D. # at . Please address all correspondence to .

Sincerely yours,

Employee Plans Technical Group

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