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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

U.I.L. 408.03-00

MAY 30 2003

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Legend:

Decedent: ********

Taxpayer A: ********

IRA X: ********

Company O: ********

Company P: ********

Trust F: ********

IRA Y: ********

Trust G: ********

Dear ********

This is in response to a ruling request dated July 2, 2002, as supplemented by correspondence dated November 27, 2002, and March 4, 2003, submitted on your behalf by your authorized representative.

The following facts have been submitted and represented by Taxpayer A:

At the time of his death, Decedent maintained IRA X with Company P. The custodian of IRA X was Company P. Decedent had not started receiving required minimum distributions from IRA X prior to his death because he had not reached his "required beginning date" for purposes of section 401(a)(9) of the Internal Revenue Code made applicable to individual retirement arrangements (IRAs) under section 408(a)6) of the Code. Decedent was born on August 31,1925 and died on February 27, 1996. Decedent would have attained age 70 1/2 on February 2, 1996. Decedent's required beginning date was April 1,1997.

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Trust F was the beneficiary of a fractional share of IRA X having a value equal to the amount of Decedent's available estate tax exemption equivalent remaining after applying to that exemption all other assets not eligible for Decedent's estate tax marital deduction. The remaining amount of that exemption was $600,000.00. Taxpayer A was the beneficiary of the balance of IRA X. At the time of Decedent's death, the account balance of IRA X was approximately $633,000.00.

In a letter dated March 19, 1996, Taxpayer A requested Company P to split IRA X, and transfer approximately $33,000.00 to IRA Y, a new IRA established at Company P in the Decedent's name with Taxpayer A as its sole beneficiary. Prior to the commencement of distributions from IRA X, Taxpayer A requested that she receive a monthly distribution from IRA Y. Taxpayer A received monthly distributions from IRA Y until that account was exhausted and closed in November 1996 pursuant to Taxpayer A's request. The balance of IRA X, approximately $600,000.00, remained in IRA X with Trust F as its sole beneficiary.

Taxpayer A is the trustee of Trust F. Trust F provides that during Taxpayer A's lifetime, the net income of Trust F shall be paid to her, at least quarterly, and that the trustee of Trust F shall pay from the principal of the trust estate such sums as Taxpayer A may in writing request. Trust F further provides that upon the death of Taxpayer A, the remaining amounts in Trust F, principal and income, shall be paid to such appointees (including Taxpayer A's estate) as directed by Taxpayer A's Last Will and Testament.

In the same March 19, 1996 letter to Company P, Taxpayer A advised Company P that, as trustee of Trust F, she would take distributions from IRA X. Company P recognized Trust F as the beneficiary of IRA X and treated Taxpayer A as the designated beneficiary of Trust F and began making required minimum distributions, based on Taxpayer A's life expectancy, from IRA X to Taxpayer A in December 1997 and continuing through 2001.

In November 2001, Taxpayer A was advised by Company O that fifty percent of the balance of IRA X had to be distributed prior to the close of 2001, which was the calendar year which contained the fifth anniversary of Decedent's death. To accomplish this distribution, Taxpayer A, on November 27, 2001, signed and returned to Company O a distribution form that resulted in a total distribution of $251,447.88 being made from IRA X on December 4, 2001.

Although Trust F was the beneficiary of IRA X, the distribution form used to initiate the distribution was signed by Taxpayer A in her individual name, not as trustee of Trust F. The account at Company O to which the IRA X distribution was made was not Trust F but Taxpayer A's revocable grantor trust, Trust G. Taxpayer A subsequently challenged the validity of the distribution and, on May 10, 2002, asked Company O to rescind the distribution and redeposit the distribution back into IRA X. Taxpayer A was informed that the funds could not be redeposited into IRA X because the 60-day rollover period had expired. All of the securities and the money funds transferred from IRA X to Trust G remain in that trust.

Based upon the above facts and representations, the following rulings have been requested:

1. The distribution from IRA X of fifty percent of the balance in IRA X was not required under section 408(a)(6) and the applicable minimum distribution regulations.

2. The distribution may be redeposited into IRA X despite the expiration of the 60-day rollover period provided for in Code section 408(d)(3), and if the distribution is so redeposited, Taxpayer A will not be required to include the distribution in her gross income for 2001 under Code section 408(d).

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 the IRA trust is maintained. Section 401(a)(9) sets forth the general rules applicable to required minimum distributions from qualified plans.

Section 401(a)(9)(A)(ii) of the Code provides that a trust shall not constitute a qualified trust under that subsection unless the plan provides that the entire interest of each employee will be distributed, beginning not later than the required beginning date, in accordance with regulations, 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) provides, in relevant part, that 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)(B)(ii) of the Code provides that a trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), the entire interest of the employee will be distributed within 5 years after the death of such employee.

Section 1. 401(a)(9)-1 of the Proposed Income Tax regulations published in the Federal Register on July 27, 1987, as amended, (hereinafter referred to as "old proposed regulations"), Question & Answer C-2, provided that, in order to satisfy the five-year rule in section 401(a)(9)(B)(ii), the employee's entire interest must be distributed as of December 31 of the calendar year which contains the fifth anniversary of the date of the employee's death. In general, taxpayers could rely on the "old proposed regulations" for guidance in determining required minimum distributions from all account balances and benefits in existence on or after January 1, 1985.

Section 401(a)(9)(B)(iii) of the Code provides an exception to the above referenced five-year rule. Under the exception, any portion of an employee's interest payable to a designated beneficiary which is to be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary) may be so distributed beginning not later than one year after the date of the employee's death or such later date as the Secretary may by regulations prescribe.

Decedent died prior to his required beginning date, which was April 1, 1997. Prior to his death, Decedent named Trust F as the beneficiary of his IRA X.

Section 1.401(a)(9)-1 of the old proposed regulations, Question & Answer D-5, provided that only an individual may be a designated beneficiary for purposes of determining the distribution period under section 401(a)(9)(A)(ii) of the Code. Consequently, a trust itself may not be the designated beneficiary even though the trust is named as a beneficiary. However, if the requirements of paragraph (b) of this Question & Answer D-5(a) are met, distributions made to the trust will be treated as paid to the beneficiaries of the trust with respect to the trust's interest in the employee's benefit, and the beneficiaries of the trust will be treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)(A)(ii) of the Code.

Distributions from an IRA during the owner's lifetime must satisfy the minimum distribution incidental benefit requirement of section 1.401(a)(9)-2 of the old proposed regulations. This is a requirement that must be met to ensure that the IRA is used primarily to provide retirement benefits to the IRA owner. After the owner's death, only "incidental" benefits are expected to remain for distribution to the owner's beneficiary (or beneficiaries). Section 1.401(a)(9)-2, Question and Answer A-3 of the old proposed regulations provided, in part, that the minimum distribution incidental benefit requirement does not apply to distributions after the employee's (IRA owner's) death. Since Decedent died prior to his required beginning date, the minimum distribution incidental benefit requirement does not apply to distributions from IRA X in years after the death of the Decedent.

Decedent died on February 27, 1996, prior to his required beginning date. Trust F was named the beneficiary of Decedent's IRA X prior to his death. Company P, in making distributions from IRA X, treated Taxpayer A, the sole beneficiary of Trust F during her lifetime, as the designated beneficiary of IRA X and commenced making distributions to her based on her life expectancy on or about December 31, 1997 (the end of the year following the year of Decedent's death). Periodic distributions payable to a designated beneficiary over such designated beneficiary's life expectancy commencing not later than one year after the date of the employee's death is a distribution method that falls within the exception to the five-year rule of section 401(a)(9)(B)(ii) of the Code. With respect to ruling number one, we conclude that, since distributions from IRA X commenced within the period beginning not later than one year after the date of Decedent's death over Taxpayer A's life expectancy, a distribution from IRA X of fifty percent of the IRA X account balance was not required under section 408(a)(6) and the applicable minimum distribution rules.

With respect to ruling number two, section 408(d)(1) of the Code provides, in general, that except as otherwise provided in section 408(d), any amount paid or distributed from an IRA shall be included in gross income by the payee or distributee, as the case may be in the manner provided under section 72.

Section 408(d)(3) of the Code provides that section 408(d)(1) does not apply to a rollover distribution if such distribution satisfies the requirements of sections 408(d)(3)(A) and (B).

Section 408(d)(3)(A)(i) of the Code provides that section 408(d)(1) does not apply to any amounts paid or distributed out of an IRA to an individual for whose benefit the account is maintained if the entire amount received (including money and any other property) is paid into an IRA (other than an endowment contract) for the benefit of such individual not later than the $60^{th}$ day after the day on which he receives the payment or distribution.

Based on the facts submitted, a distribution was made from IRA X to Trust G on December 4, 2001. Trust G, a grantor trust, is not an individual retirement arrangement as described in either Code section 408(a) or section 408(b). Since more than 60 days have elapsed since the distribution was made, we conclude, with respect to ruling number two, that you may not redeposit the distribution back into IRA X or any other individual retirement arrangement described in either Code section 408(a) or section 408(b). Therefore, pursuant to section 408(d)(1), such amount shall be included in the payee's gross income in 2001, the year the distribution was made from IRA X to Trust G.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day rollover requirement under subparagraphs (A) and (C) where the failure to waive such requirement would be against equity or good conscience, including casualty disaster, or other events beyond the reasonable control of the individual subject to the requirements. The relief provided for by section 408(d)(3)(I) is applicable to distributions made after December 31, 2001. The Secretary had no authority to extend the 60-day rollover deadline for distributions made prior to January 1, 2002.

This ruling assumes that IRA X and IRA Y meet the requirements of section 408(a) of the Code at all times relevant to this transaction.

The conclusions reached herein are limited to the facts as submitted by Taxpayer A in correspondence dated July 2, 2002, November 27, 2002, and March 4, 2003. This ruling expresses no opinion as to whether Trust F meets the requirements of section 1.401(a)(9)-1 of the old proposed regulations, Question & Answer D-5. Further, this ruling expresses no opinion as to whether the distributions from IRA X to Taxpayer A, the transfer of funds from IRA X to IRA Y, or the distributions from IRA Y to Taxpayer A met the requirements of section 401(a)(9) of the Code.

The conclusions reached in this ruling are based on the old proposed regulations under Code section 401(a)(9). Final regulations under Code section 401(a)(9) were published in the Federal Register on April 17, 2002. These regulations apply for determining required minimum distributions for calendar years beginning on or after January 1, 2003. No consideration has been given to the effect of the final regulations on the above facts and representations.

No opinion is expressed as to the federal tax consequences of the transaction described above under any other provisions of the Code.

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

If your have any questions, please contact ********T:EP:RA:T2, at ********.

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

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd
Manager, Employee Plans
Technical Group 2

Enclosures:

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Form 437