

200537044



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAR 29 2005

UICs: 401.06-01
401.06-02
2033.01-00
2041.02-00

T:EP:RA:T3

LEGEND:

Decedent	=
IRA W	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
D	=
E	=
F	=
G	=
H	=
J	=
K	=
L	=
M	=
N	=
%1	=
%2	=
%3	=
%4	=
%5	=
%6	=
%7	=
%8	=
%9	=
State	=
State Statute	=
State Statute (2)	=
Sections	=
Trust T:	=
Law Firm U:	=

This is in response to your request for letter ruling dated _____, as supplemented by correspondence dated _____, and as further supplemented by _____

correspondence dated _____ and a FAX dated _____, submitted by your authorized representative on your behalf, in which you request a series of letter rulings under sections 401(a)(9), 2033 and 2041 of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request.

Decedent was the owner of IRA W. On Date 1, 2003, Decedent executed the Decedent IRA W Inheritance Trust (Trust T). On the same date Decedent executed a beneficiary designation form naming nine separate trusts (D Trust through M Trust) (below) established under the terms of Trust T as the primary beneficiaries of IRA W. Each trust (D Trust through M Trust) was allocated a specific percentage of IRA W which allocation corresponded to the percentages allocated to each trust under the provisions of Trust T (see below). The Date 1, 2003 beneficiary designation also provided that "all above trusts established as separate shares under Trust T dated Date 1, 2003".

On Date 2, 2003, Decedent amended Trust T. Decedent died on Date 3, 2003, prior to his "required beginning date" as that term is defined in section 401(a)(9)(C) of the Internal Revenue Code. Upon Decedent's death, Trust T became irrevocable. At the time of his death Decedent was unmarried and had no children.

Paragraph B of the section of Trust T titled "Trustor's Power to Amend and Revoke this Trust", (page 3 of Trust T) provides that "from and after the death of the Trustor, the entire trust herein shall be irrevocable and non-amendable".

Under the Trust T section captioned, "Payment of Debts, Expenses and Taxes Upon Death of Trustor", (page 4 of Trust T) upon Decedent's death, the Trustee is authorized to pay any debts and expenses of the Trust that the Trustee determines to be just, any inheritance, estate, or death taxes, including interest and penalties that may be due by reason of Decedent's death. However, no such payments are to be made if the Trustee determines that other provisions have been made for the payment of such expenses, debts, and taxes, or other assets are readily available for such payment. In addition, no payments of debts, expenses or taxes are to be made from any Retirement Assets (other than those directly attributable to and the legal obligation of a particular Retirement Asset) if the Trust or any separate trust established under Trust to which the Retirement Assets are payable would otherwise qualify as a "designated beneficiary" within the meaning of section 401(a)(9).

Under the Trust T section captioned, "Directions for Distribution of Remainder After Death of Trustor", Paragraph 5, Creation of Separate Shares (page 6 of Trust T) the Trustee is to create nine separate shares under the terms of the Decedent's beneficiary designation with respect to IRA W, no later than September 30th of the year following the year of Decedent's death. Such separate shares are to be treated as effective ab initio to the date of Decedent's death. Trust T further provides that "...It is the intention of this provision to allow the Trust

beneficiaries, where possible and appropriate (keeping in mind the Trustor's dispositive wishes and the situation of the beneficiary) to enjoy the benefit of distributions from any Retirement Assets being stretched out over their separate life expectancies".

Under the section of Trust T captioned, "Distribution To Beneficiaries", Paragraph (A) Division into Separate Shares, (page 7 of Trust T) each of the nine trusts is to be held for the benefit of one of nine individuals, and is to be funded with a designated percentage of the value of IRA W at the time of Decedent's death. The nine trusts are as follows:

- D Trust for the benefit of D funded with %1 of IRA W
- E Trust for the benefit of E funded with %2 of IRA W
- F Trust for the benefit of F funded with %3 of IRA W
- G Trust for the benefit of G funded with %4 of IRA W
- H Trust for the benefit of H funded with %5 of IRA W
- J Trust for the benefit of J funded with %6 of IRA W
- K Trust for the benefit of K funded with %7 of IRA W
- L Trust for the benefit of L funded with %8 of IRA W
- M Trust for the benefit of M funded with %9 of IRA W

Under the Distribution to Beneficiaries section, Paragraph (B) Administration of Separate Shares of Named Beneficiaries (page 8 of Trust T), the share set aside for a surviving named beneficiary pursuant to the terms of Trust T is to constitute a separate and distinct trust for such individual. Under Paragraph B(1), all amounts distributed to each trust from IRA W and other Retirement Assets while the named beneficiary is alive are to be paid to or for the benefit of such individual as soon as possible following receipt of such amounts by the Trustee. The trust provides that it is Trustor's intent that this sentence be interpreted, and to the extent necessary modified, by the Trustee, so that the trust share constitutes a "conduit" trust for purposes of the required minimum distribution rule. Trust expenses may be deducted prior to any such payment to or for the benefit of the beneficiary of the trust share if the deduction does not disqualify the status of the trust as a conduit trust. This paragraph may be rendered void, ab initio, by the Trust Protector pursuant to the Section of the Trust Agreement entitled "Trust Protector Provisions."

Paragraph B(2) and B(3) provide additional dispositive rules that it is represented are intended to apply to the assets of a trust share that are not attributable to IRA W or other Retirement Assets. Under Paragraph B(2), the net income of a trust share is to be accumulated and added to principal. Under Paragraph B(3), if at any time in the sole and absolute discretion of the Trustee, the beneficiary for whom the trust has been set aside is in need of funds for the beneficiary's proper health, maintenance, support and education, the Trustee, in its sole and absolute discretion, may pay to or apply for the beneficiary's individual benefit, such amounts of the accumulated income and principal, up to the whole thereof, as the Trustee may from time to time deem necessary for the individual's use and benefit.

Paragraph B(3) further provides that "... The individuals to whom or for whose benefit accumulated income and principal may be paid pursuant to this paragraph may be limited, ab initio, by the Trust Protector pursuant to the Section of the Trust Agreement entitled Trust Protector Provisions".

Paragraph (B)(4) Limited Powers of Appointment (page 9 of Trust T) provides that upon the death of the individual for whom the trust share is set aside, the Trustee is to distribute up to one-half of the remaining balance, including accumulated income and principal, to any individual and/or charitable organization, except for such individual's estate, creditors, and/or creditors of the individual's estate, either outright or in trust upon such terms and conditions and in such amounts or proportions as the individual shall appoint by will, codicil or other written instrument executed prior to such individual's death and specifically referring to the power of appointment.

Paragraph B(4) further provides that "...The individuals to whom or for whose benefit accumulated income and principal may be paid pursuant to this paragraph may be limited, ab initio, by the Trust Protector pursuant to the Section of the Trust Agreement entitled Trust Protector Provisions".

Under Paragraph B(5), "Final Disposition of Trust" (page 9 of Trust T) the balance of the corpus of the trust share not otherwise disposed of under Paragraph B(4), including accumulated income and principal, is to be held, administered and distributed pursuant to Paragraph A, Division into Separate Shares of the section captioned "Distribution to Beneficiaries" (page 7 of Trust T). Accordingly, the balance of the trust share property is to be divided and added to the other remaining shares in proportion to their relative percentage, to be distributed as if it had been an original part of the respective share.

Paragraph B(5) further provides that "...The individuals to whom or for whose benefit accumulated income and principal may be paid pursuant to this paragraph may be limited, ab initio, by the Trust Protector pursuant to the Section of the Trust Agreement entitled Trust Protector Provisions".

Under Distributions to Beneficiaries Paragraph (C) Distributions if No Other Disposition, (page 10 of Trust T) any share or portion of a share of any trust created which is not disposed of under any other provisions of Trust is to be distributed to the remaining beneficiaries of Trust in such shares as are listed on Schedule B attached to Trust. Since no beneficiaries were listed on Schedule B, under the terms of this paragraph, the trust corpus will pass to Decedent's heirs at law.

J was appointed as Trustee of each of the nine trust shares established under the terms of Trust T on Decedent's death. In the event of the death, incompetency, inability or unwillingness to act of J, E is to act as trustee of the nine trusts. In the event of the death, incompetency, inability or unwillingness to act of E, then M is to act as trustee of the nine trusts.

Under the Trust section captioned "Special Co-Trustee Provisions" (page 26 of Trust T), Paragraph A provides that after Decedent's death, except where a beneficiary is named to act as Trustee of his or her own trust share, or where limited by an ascertainable standard, as defined under section 2041 of the Internal Revenue Code, no Trustee is to participate in the exercise of any discretionary authority to allocate receipts and expenses to principal or income, any discretionary authority to distribute principal or income, or any discretionary authority to terminate any trust created under Trust, if distributions could then be made to the Trustee or the Trustee has any legal obligation for the support of any persons to whom distributions could then be made. If a Trustee is prohibited from participating in the exercise of any power, duty, or discretionary authority, or should a power, duty or discretionary authority granted to a Trustee be absolutely void, then the power, duty or discretionary authority may be exercised as described first in Paragraph B, by an existing Co-Trustee, or second in Paragraph C by the Special Co-Trustee.

J is appointed as the Special Co-Trustee (provided J is an independent trustee as defined in section 674(c) of the Internal Revenue Code.) E is designated as the successor Special Co-Trustee and M as the next successor, provided they (respectively) are independent trustees within the meaning of section 674(c). The last named individual to act can designate a successor Special Co-Trustee provided that person is an independent trustee within the meaning of section 674(c).

Under the Trust section captioned, "Trust Protector Provisions" (page 29 of Trust T), Paragraph A, the purpose of the Trust Protector is to perform certain functions with respect to Trust and the trust shares. Paragraph B(1) provides that the Special Co-Trustee may at any time and in his or her sole discretion, appoint a Trust Protector of the Trust or of any separate trust established under Trust. Paragraph B(3) provides that at no time may a Trust Protector be appointed or otherwise act if such person or entity is a currently acting Trustee or Special Co-Trustee or is a current beneficiary of any separate trust established under Trust or is related to any beneficiary in any of the following ways: as spouse, ancestor or issue, brother, sister, employee or such beneficiary or of any corporation, firm or partnership in which such beneficiary is an executive or has stock or other holdings which are significant from the viewpoint of control, or is otherwise "related or subordinate to" such beneficiary under sections 674(a) and (c) and the regulations thereunder or any similar succeeding regulations.

Paragraph C(2) of the "Trust Protector Provisions" provides, in relevant part, that the Trust protector may (a) where a separate trust established hereunder contains a paragraph entitled

“Distribution of IRA Withdrawals” (or otherwise provides for the payout to or for the beneficiary of all withdrawals from IRAs and other Retirement Assets), void said provision so that instead all such withdrawals shall be accumulated and added to principal. In such a case, Paragraphs B(2) and B(3) previously referred to shall apply. Paragraph C(2) contains additional language referring to the exercise of the power referenced herein after September 30 of the year following the calendar year of Decedent’s death.

Paragraph C(3) of the “Trust Protector Provisions” provides, in relevant part, that if a separate trust established under the provisions of Trust T provides for the discretionary distribution of accumulated income and/or principal to someone other than the primary beneficiary of for a power of appointment over accumulated income and/or principal to someone other than the primary beneficiary, the Trust Protector may add to such provision that no such accumulated income and/or principal shall be paid to or for the benefit of: (1) any person who is older than the primary beneficiary of such trust.

N, associated with Law Firm U, is the Trust Protector of Trust T. On or about Date 4, 2004, which date was within nine (9) months of Date 3, 2003 (Decedent’s date of death), and which date predated September 30, 2004, N, in conjunction with Law Firm U, exercised, in writing, the power(s) granted it in Paragraphs C(2) and C(3) of the “Trust Protector Provisions” (above) to: (1) convert J Trust (set up to benefit J) to an Accumulation Trust and (2) to limit potential remaindermen of J Trust to persons not older than J.

With respect to said Date 4, 2004 action of the Trust Protector, your authorized representative asserts on your behalf that said action is valid under State Statute 2 Sections and is treated as a disclaimer for all purposes associated with this ruling request.

It has been represented that the documentation described in section 1.401(a)(9)-4 of the “Final” regulations, Q&A-6, was provided to the administrator/custodian of IRA W within the time frame specified therein. It has also been represented that Trust T and the trusts created pursuant to its terms are valid under the laws of State.

Additionally, it has been represented on your behalf that, prior to the date of this ruling request (prior to December 31, 2004) IRA W was divided, by means of a series of trustee to trustee transfers, into a number of separate IRAs set up and maintained in the name of Decedent to benefit the named beneficiaries of IRA W. All post-death investment gains and losses, contributions, and forfeitures, for the period up to the creation of the separate IRAs, were allocated on a pro rata basis in a manner intended to be reasonable and consistent among the several IRAs.

Finally, it has been represented that distributions intended to comply with the requirements of Code section 401(a)(9) were made with respect to calendar year 2004. Said

distributions were made from the separate IRAs referenced above based on the life expectancy of the beneficiary (D through M) thereof using the Single Life Expectancy Table found in section 1.401(a)(9)-9 of the "Final" Income Tax Regulations. Distributions for subsequent calendar years will be based on the IRA beneficiaries life expectancy reduced by one for each year that has elapsed since 2004.

Based on the above facts and representations, the following letter rulings are requested:

1. That "Upon the death of the primary beneficiary of each separate trust (Trust D through Trust M), the trust assets will not be included in such beneficiary's estate;"
2. That the provision in each trust (Trust D through Trust M (except for Trust J)) mandating that all withdrawals from retirement assets be distributed to the trust beneficiary as soon as possible after Trust expenses are deducted, will not cause the trust to be treated as if there is an accumulation of distributions from retirement accounts (see section 1.401(a)(9)-5 of the "Final" Income Tax Regulations, Question and Answer-7 (Example 2));
3. That each trust (Trust T and Trust D through Trust M (created under the provisions of Trust T)) qualifies as a "see-through" trust as that term is used in section 1.401(a)(9)-5 of the "Final" Income Tax Regulations, Question and Answer-5;
4. That for purposes of calculating required minimum distributions within the meaning of Code section 401(a)(9) (made applicable to IRAs pursuant to Code section 408(a)(6)), with respect to Trust D through Trust M (other than Trust J) the appropriate measuring life will be the life of the primary beneficiary thereof;
5. That for purposes of calculating required minimum distributions within the meaning of Code section 401(a)(9) (made applicable to IRAs pursuant to Code section 408(a)(6)), with respect to Trust J, the appropriate measuring life will be the life of J, the primary beneficiary thereof; and
6. For purposes of calculating minimum required distributions within the meaning of Code section 401(a)(9) (made applicable to IRAs pursuant to Code section 408(a)(6)), with respect to each trust, Trust D through Trust M, the life expectancy (or expectancies) of the beneficiary (or beneficiaries) thereof may be considered without regard to the life expectancy (ies) of the beneficiary (ies) of the other trusts

With respect to your initial ruling request, section 2001 of the Code imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2033 provides that the value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.

Section 20.2033-1 provides that the gross estate of a decedent who was a citizen or resident of the United States at the time of his death includes, under section 2033, the value of all

property, whether real or personal, tangible or intangible, and wherever situated, beneficially owned by the decedent at the time of his death.

Section 2041(a)(2) provides for the inclusion in the gross estate of any property with respect to which the decedent possesses, at the time of his death, a general power of appointment created after October 21, 1942.

Section 2041(b)(1) provides that the term "general power of appointment" means a power that is exercisable in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate. However, a power to consume, invade, or appropriate property for the benefit of the decedent that is limited by an ascertainable standard relating to health, education, support, or maintenance of the decedent is not a general power of appointment.

Under § 20.2041-1(c)(1) of the Estate Tax Regulations, a power of appointment is not a general power of appointment if by its terms it is either – (a) Exercisable only in favor of one or more designated persons or classes other than the decedent or his creditors, or the decedent's estate or the creditors of his estate; or (b) Expressly not exercisable in favor of the decedent or his creditors, or the decedent's estate or the creditors of his estate. Under § 20.2041-1(c)(2), a power is limited by an ascertainable standard if the extent of the holder's duty to exercise and not to exercise the power is reasonably measurable in terms of his needs for health, education, or support (or any combination of them). The words "support" and "maintenance" are synonymous and their meaning is not limited to the bare necessities of life.

State Statute provides as follows:

(a) Subject to the additional requirements of subdivisions (b), (c), and (d), if a trust instrument confers "absolute," "sole," or "uncontrolled" discretion on a trustee, the trustee shall act in accordance with fiduciary principles and shall not act in bad faith or in disregard of the purposes of the trust.

(b) Notwithstanding the use of terms like "absolute," "sole," or "uncontrolled" by a settlor or a testator, a person who is a beneficiary of a trust that permits the person, either individually or as trustee or cotrustee, to make discretionary distributions of income or principal to or for the benefit of himself or herself pursuant to a standard, shall exercise that power reasonably and in accordance with the standard.

(c) Unless a settlor or a testator clearly indicates that a broader power is intended by express reference to this subdivision, a person who is a beneficiary of a trust that permits the person, as trustee or cotrustee, to make discretionary distributions of income or principal to or for the benefit of himself or herself may exercise that power in his or her favor only for his or her health, education, support, or maintenance within the meaning of

Sections 2041 and 2514 of the Internal Revenue Code. . . .

In the present case, the interest of the primary beneficiary in his or her trust share will terminate on the beneficiary's death. Accordingly, the primary beneficiary will not possess an interest in the trust corpus that would cause the trust to be includible in the primary beneficiary's gross estate under section 2033. Further, the trustee of each trust share can invade the trust corpus for the benefit of the primary beneficiary. However, if a primary beneficiary becomes the trustee of his or her trust share, that beneficiary acting as trustee would not possess a general power of appointment with respect to his or her trust share. See, section 20.2041-1(c). See also, State Statute. Further, the testamentary power of appointment each primary beneficiary possesses with respect to his or her trust share is a limited power of appointment; that is, the power can not be exercised in favor of the beneficiary's estate, creditors, or creditors of the beneficiary's estate. Accordingly, possession of that power will not cause the trust share corpus to be included in the primary beneficiary's gross estate under section 2041. We conclude, therefore, that upon the death of the primary beneficiary of a trust share, the trust share will not be includible in the primary beneficiary's gross estate.

Thus, with respect to your first ruling request, we conclude as follows:

That "Upon the death of the primary beneficiary of each separate trust (Trust D through Trust M), the trust assets will not be included in such beneficiary's estate.

With respect to your second through sixth 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 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 the trust is maintained.

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.

Code section 401(a)(9)(E) defines "designated beneficiary" as any individual designated as a beneficiary by the employee (IRA holder).

With further respect to your second through sixth 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 § 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. Q&A-4 further provides, that "consequently, any person who was a beneficiary as of the date of the employee's (IRA holder's) death, but is not a beneficiary as of that September 30 (e.g. because the person receives the entire benefit to which he is entitled before that September 30) is not taken into account in 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 benefit in lieu of that person, the disclaiming person is not taken into account in determining the person's designated beneficiary".

Section 1.401(a)(9)-8 of the "Final" regulations, Qs&As-2 and 3 provide the rules that apply if the IRA of a deceased IRA holder is divided into separate accounts for purposes of Code section 401(a)(9).

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 and the beneficiaries with respect to one separate account differ from the beneficiaries with respect to the other separate accounts of the employee under the plan, for years subsequent to the calendar year containing the date as of which the separate accounts were established, or date of death if later, such separate account under the plan is not aggregated with the other separate accounts under the plan in order to determine whether the distributions from such separate account under the plan satisfy section 401(a)(9). However, the applicable distribution period for each such separate account is determined disregarding the other beneficiaries only if the separate account is established on a date no later than the last day of the year following the calendar year of the employee's (IRA holder's) death.

Section 1.401(a)(9)-8 of the "Final" regulations, Q&A-3, defines separate accounts for purposes of Code section 401(a)(9), as separate portions of an employee's benefit reflecting the separate interests 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 investments, gains and losses, contributions, and forfeitures for the period prior to the establishment of the separate accounts on a pro rata basis in a reasonable and consistent manner among the separate accounts.

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 section 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.

Section 1.401(a)(9)-9, of the "Final" Regulations, Q&A-1, sets forth the "Single Life Table" used to compute the life expectancy of an individual.

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.

With further respect to your second through sixth ruling requests, Decedent maintained IRA W at his calendar year 2003 death. Subsequent to Decedent's death, IRA W was subdivided, by means of a series of trustee-to-trustee transfers, into nine IRAs maintained in the name of Decedent to benefit the nine named beneficiaries of IRA W. Such subdivision was intended to comply with the requirements of relevant provisions of Trust T found above.

The provisions of Trust T, as modified and as complied with operationally, require that a separate trust be set up to hold the appropriate portion of IRA W allocated to each trust under Decedent's IRA W beneficiary designation and under provisions of Trust T. Pursuant to relevant provisions of Trust T, the assets held in each trust, except Trust J, are to be distributed to the primary beneficiary of said trust as soon as they are received by the trustee of the trust. Upon distribution to Trust J, assets therein are to be accumulated and added to the principal thereof to benefit potential remaindermen none of which can be older than J.

In this case, the Service notes that the separate trusts created under the provisions of Trust T were the beneficiaries of Decedent's interest in his IRA W, and that Trust T was not the named beneficiary of IRA W. The Service also notes that, prior to December 31, 2004, IRA W was divided, by means of a series of trustee-to-trustee transfers, into a number of sub-IRAs each of which was set up and maintained in the name of Decedent and each of which was set up to benefit a specific beneficiary of Trust T through the trusts created under the provisions of Trust

T. Thus, distributions from IRA W will now be made by the sub-IRAs to the trusts created under provisions of Trust T. Distributions will not be made to Trust T.

An issue to be resolved in this case is whether to apply the limitations found in Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-5(c), to the fact pattern presented herein.

The facts in this case indicate that Decedent intended that the Trust T trustee divide Trust T into separate trusts at his (Decedent's) death, and directed that the trustee do so. The Trust T trustee had no discretion in the matter. Furthermore, the Decedent specifically named the trusts created under the provisions of Trust T (and not Trust T) as the beneficiaries of his IRA W. Thus, the Decedent, through the provisions of his Trust T, and through his Date 1, 2003, beneficiary designation took action to insure that his IRA W did not pass through Trust T, and that the trustee of Trust T had no part in dividing IRA W among the beneficiaries thereof.

Thus, for purposes of Code section 401(a)(9), the Service will not apply the rule found in Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-5(c), to the fact pattern presented herein. Therefore, the beneficiaries of one of the trusts created under the provisions of Trust T need not be considered in determining who, if anyone, is the Code section 401(a)(9) designated beneficiary of another such trust.

A second issue to be resolved in this case is whether the Date 4, 2004 action of the Trust Protector, noted above, has negative implications for Code section 401(a)(9) purposes-i.e. does it negate Decedent's Date 1, 2003, beneficiary designation to the extent said designation affects J and the sub-trust and sub-IRA set up to benefit him?

In this regard, we note that the Trust Protector's actions were in conformity with relevant provisions of Trust T which was drafted for Decedent and executed by Decedent. Additionally, we note that, pursuant to the terms of Trust T, said actions are effective "ab initio" or, in other words, relate back to the date that Decedent executed Trust T. Thus, said Date 4, 2004, writing may be treated as a part of Trust T. Furthermore, we also note that said actions were taken within nine (9) months of the date of Decedent's death, and are treated as a disclaimer under the laws of State.

Thus, said Trust Protector action may be treated as effectuating Decedent's written intent as to which beneficiaries were to receive his IRA W, and will not be treated as a post-death action taken by an individual or entity which negates, modifies, or changes Decedent's Date 1, 2003 beneficiary designation. Thus, with respect to the trust created under the provisions of Trust T to benefit J, for purposes of Code section 401(a)(9), none of the remaindermen of said trust can be older than J.

Therefore, with respect to your second through sixth ruling requests, we determine as follows:

2. That the provision in each trust (Trust D through Trust M (except for Trust J)) mandating that all withdrawals from retirement assets be distributed to the trust beneficiary as soon as possible after Trust expenses are deducted, will not cause the trust to be treated as if there is an accumulation of distributions from retirement accounts (see section 1.401(a)(9)-5 of the "Final" Income Tax Regulations, Question and Answer-7 (Consistent with Example 2));
3. That each trust (Trust D through Trust M (created under the provisions of Trust T)) qualifies as a "see-through" trust as that term is used in section 1.401(a)(9)-5 of the "Final" Income Tax Regulations, Question and Answer-5;
4. That for purposes of calculating required minimum distributions within the meaning of Code section 401(a)(9) (made applicable to IRAs pursuant to Code section 408(a)(6)), with respect to Trust D through Trust M (other than Trust J) the appropriate measuring life will be the life of the primary beneficiary thereof;
5. That for purposes of calculating required minimum distributions within the meaning of Code section 401(a)(9) (made applicable to IRAs pursuant to Code section 408(a)(6)), with respect to Trust J, the appropriate measuring life will be the life of J, the primary beneficiary thereof; and
6. For purposes of calculating minimum required distributions within the meaning of Code section 401(a)(9) (made applicable to IRAs pursuant to Code section 408(a)(6)), with respect to each trust, Trust D through Trust M, the life expectancy (or expectancies) of the beneficiary (or beneficiaries) thereof may be considered without regard to the life expectancy (ies) of the beneficiary (ies) of the other trusts

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by the appropriate party. The letter ruling specifically assumes that IRA W and all of the other IRAs referenced therein either have met, are meeting, or will meet the requirements of Code section 408(a) at all times relevant thereto. Furthermore, it assumes that Trust T and all of the other

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trusts referenced therein are valid under the laws of State,

Please note that while this office has not verified any part of the material submitted in support of the request for rulings, it is subject to verification and examination.

Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the facts described above under the cited provisions or any other provisions of the Code or regulations.

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

Pursuant to a power of attorney on file with the Service, the original of this ruling letter is being sent to your authorized representative.

If you have any questions concerning this letter ruling, please contact
, Esquire (ID: 50-03192) who may be reached at 202-283- (not a toll-free number)
or 202-283-9598 (FAX).

Sincerely yours,



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

Enclosures:

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Notice of Intention to Disclose