

**Private Letter Ruling -Number: 9630034**

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Internal Revenue Service

APR 30, 1996

Internal Revenue Service

Department of the Treasury

P.O. Box 7604

Ben Franklin Station

Washington. DC 20044

Dear

This is in response to your letter of January 3, 1996, requesting a ruling concerning a proposed disclaimer by Spouse of a portion of her interest in Decedent's IRA D.

According to the facts submitted, Decedent was born on September 7, 1923, and died on July 18, 1995, and thus had attained the age of 70 1/2 prior to his death. At the time of his death, Decedent was a resident of State, a community property state. Decedent's Spouse survived Decedent for more than sixty days. Spouse was born on December 16, 1925, and thus, will attain the age of 70 1/2 on June 16, 1996.

Under the terms of Decedent's will, the Decedent devised and bequeathed his entire residuary estate to Spouse, but further provided that if Spouse disclaimed any part of this bequest, the disclaimed portion will not be liable for any debts, funeral and administration expenses and taxes, and will be distributed to Spouse, as trustee, to be held, administered and distributed in accordance with the terms of the trust created under Article FIFTH of the will.

Under Article FIFTH, the trustee is to pay to or apply for the benefit of Spouse during her lifetime, the amount of income and principal that is required for Spouse's proper health, education, maintenance, and support. Upon Spouse's death, the trustee is to divide the trust property into as many equal shares as there are children of the Decedent then living and children of the Decedent then deceased but leaving issue then living.

Decedent was a participant in a custodial IRA (IRA D) established at X. IRA D was the community property of Decedent and Spouse. Under a beneficiary designation which was dated prior to April 1 of the date on which Decedent attained age 70 1/2, Decedent designated Spouse as the sole beneficiary of the IRA if she survived him for more than sixty days. The beneficiary designation further provides that if Spouse fails to survive Decedent or disclaims any portion of the plan, then the secondary beneficiary will be the testamentary trust designated in the Decedent's will. However, if no-will is admitted to probate within sixty (60) days of the Decedent's death or if a will is admitted to probate within sixty days but does not establish a testamentary trust, then the secondary beneficiary will be the Decedent's children, in equal shares.

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At the time of his death, Decedent had reached his required beginning date. Decedent elected to take his minimum required distribution over the joint life expectancy of Decedent and Spouse, with both lives being recalculated. Section 401(a) (9) required distributions from IRA D had begun prior to Decedent's death.

Spouse proposes to execute a disclaimer of certain assets passing to her under the Decedent's will as well as a formula disclaimer of a portion of Decedent's community one-half interest in IRA D. Because Decedent had a will that was admitted to probate within sixty days of his death and because Spouse disclaimed certain probate assets, the Article FIFTH trust will be established. As a result of the disclaimers, the trustee under the trust created under Article FIFTH of the Decedent's will, will become the beneficiary of the disclaimed assets passing under the will and the disclaimed portion of the IRA. The formula disclaimer with respect to the IRA will be expressed in terms of a fraction, the numerator being the largest amount which, if allocated to the Article FIFTH trust, would not increase above zero the total federal estate tax and those state death taxes computed by reference to the credit allowable under § 2011 payable from all sources by reason of Decedent's death, after consideration of the following:

1. the fair market value of all assets in the probate estate passing to the Article FIFTH trust under the will as finally determined for federal estate tax purposes;
2. any adjusted taxable gifts and bequests, and other dispositions that do not qualify for the marital deduction made by the Decedent;
3. all charges to principal of the estate that are not deducted in computing the federal estate tax on the Decedent's estate; and,
4. any other credits or deductions.

The denominator of the fraction will be the value of the Decedent's community one-half interest in IRA D as finally determined for federal estate tax purposes.

It is represented that prior to the time of the disclaimer, Spouse will have accepted no benefits from IRA D. The disclaimed pecuniary amount and any income attributable to such disclaimed amount will be segregated from the balance of IRA D that is not disclaimed and will continue to be held in IRA D while the nondisclaimed portions of IRA D will be transferred to another separate IRA. The distributions from the disclaimed portion of IRA D to the trust under Article FIFTH will be made, in the manner elected by Decedent, over Spouse's recalculated life expectancy beginning no later than December 31, 1996. It is also represented that the disclaimer will meet all of the requirements of State law. The disclaimed assets will pass to the trust at their date of distribution values.

Under § 37A of the State Probate Code Ann. (West 1995), any beneficiary may evidence a disclaimer in the manner set out in the statute. A beneficiary includes a person who, absent a disclaimer, would have been entitled to receive property as a result of the death of another person whether by "will... [or] by an insurance, annuity, endowment, employment, deferred compensation or other contract or arrangement..." A disclaimer may be only of part of the property to be received, and may be of powers of appointments, invasion powers or other interests. A disclaimer by a spouse is a valid disclaimer even though the property or an interest in the property that would have passed under the disclaimed transfer passes because of the disclaimer to or for the benefit of the surviving spouse. Disclaimers relate back to the moment of death. Unless otherwise provided, the disclaimed property passes as if the disclaimant predeceased the decedent.

With respect to Spouse's community one-half share of IRA D established by Decedent, on December 7, 1995, Spouse transferred this one-half share into an IRA set up and maintained in her name. With respect to this transferred amount, Spouse will, prior to her § 401(a) (9) required beginning date, designate her children as beneficiaries of this IRA and will elect a method to calculate her minimum required distributions.

Spouse proposes to transfer, by means of a direct custodian to custodian transfer, the portion of Decedent's community property interest in IRA D not being disclaimed to her own IRA. Spouse intends to use the transferred amount to determine the minimum required distribution with respect to said transferred portion of her IRA for years beginning with the year after the transfer occurs. The to-be transferred portion will be used to calculate the amount of the minimum required distributions from IRA D for the year of transfer and for all prior years. Spouse intends to designate one of her four children as the designated beneficiary of one of four separate shares of the IRA into which the portion of Decedent's share of IRA D not being disclaimed will be transferred.

The following rulings are requested:

- 1. The formula disclaimer of all or a portion of the Decedent's community one-half share of IRA D will be a qualified disclaimer and as a result of the disclaimer, the disclaimed portion of the IRA that continues to be held in IRA D will be payable to the Article FIFTH trust as beneficiary.**
- 2. The disclaimed property held in IRA D, or in the Article FIFTH Trust, will not be included in the gross estate of Spouse at her death.**
- 3. The disclaimer will not cause the value of the disclaimed interest to be includible in the income of the Decedent's estate for 1995.**
- 4. The custodian to custodian transfer of Spouse's community interest in IRA D at her direction constitutes an election to treat such transferred portion as Spouse's own and therefore qualifies as a tax-free transfer pursuant to § 408(d) (3) (A) and is not subject to the limitation found in § 408(d) (3) (B).**
- 5. Spouse may designate a beneficiary for Spouse's IRA which represents Spouse's community one-half interest in IRA D and the required minimum distributions may be determined in accordance with § 401(a) (9) (A) with the initial distribution year being 1996. Furthermore, the life of the beneficiary (or lives of the beneficiaries, if applicable) designated by Spouse may be used in determining the minimum required distribution amounts.**
- 6. The custodian to custodian transfer to Spouse's IRA at her direction of the portion of Decedent's community property interest in IRA D not being disclaimed constitutes an election to treat such transferred portion as her own and therefore qualifies as a tax-free transfer pursuant to § 408(d) (3) (A) and is not subject to the limitation found in § 408(d) (3)**

(B).

7. ***The amount transferred pursuant to the custodian to custodian transfer described in ruling request 6 becomes part of Spouse's IRA and, will be subject to all elections with respect thereto. Furthermore, such transferred amount will be used in calculating the minimum required distribution in the year following the year of transfer.***
  
8. ***Payments from the IRA D funded with the disclaimed portion of Decedent's IRA D share made to the Article FIFTH trust, which- will be based on Spouse's recalculated life expectancy, will not adversely affect the § 408 qualified status of the separate IRA and will meet the minimum required distribution rules of § 401(a) (9) which-are applicable to IRAs pursuant to § 408(a)(6). As a result, said distributions will not be subject to the tax imposed by § 4974.***

#### **Rulings #1 & 2.**

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2041(a) (2) provides for the inclusion in the gross estate of any property 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, except that a power to consume 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 deemed a general power of appointment.

Section 40.2041-1(c) (2) of the Estate Tax Regulations provides that a power to consume, invade, or appropriate income or corpus, or both, for the benefit of the decedent which power is limited by an ascertainable standard relating to health, education, support, or maintenance of the decedent is, by reason of § 2041(b) (1) (A), not a general power of appointment. A power is limited by such a 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). In determining whether a power is limited by an ascertainable standard, it is immaterial whether the beneficiary is required to exhaust his other income before the power can be exercised.

Section 2046 provides that for estate tax purposes, disclaimers of property interests passing upon death are treated as provided in § 2518. Under § 2518(a), for purposes of the estate and gift tax chapters, if a person makes a qualified disclaimer with respect to any interest in property, the estate and gift tax provisions will apply to the interest as if the interest had never been transferred to the person.

Section 2518(b) provides that a "qualified disclaimer" means an irrevocable and unqualified refusal by a person to accept an interest in property, but only if:

- 1) the disclaimer is in writing,
- 2) the disclaimer is received by the transferor of the interest or his legal representative no later than 9 months after the date on which the transfer creating the interest in the person making the disclaimer is made, or the date on which the person making the disclaimer attains age 21,
- 3) the person making the disclaimer has not received the interest or any of its benefits, and
- 4) as a result of the disclaimer, the interest passes without any direction on the part of the person making the disclaimer to the decedent's spouse or to a person other than the person making the disclaimer.

Section 25.2518-2(e) (2) provides that in the case of a disclaimer made by a decedent's surviving spouse with respect to property transferred by the decedent, the disclaimer satisfies the requirements of this paragraph if the interest passes as a result of the disclaimer without any direction on the part of the surviving spouse either to the surviving spouse or to another person. If the surviving spouse, however, retains the right to direct the beneficial enjoyment of the disclaimed property in a transfer that is not subject to Federal estate and gift tax (whether as a trustee or otherwise), such spouse will be treated as directing the beneficial enjoyment of the disclaimed property, unless such power is limited by an ascertainable standard. See, § 25.2518-2(e) (5), Example 6.

Section 25.2518-3(c) of the Gift Tax Regulations relates to the disclaimer of a pecuniary amount. Under that section, the disclaimer of a specific pecuniary amount out of a pecuniary or nonpecuniary bequest or gift which satisfies the other requirements of a qualified disclaimer under § 2518(b) and the corresponding regulations is a qualified disclaimer provided that no income or other benefit of the disclaimed amount inures to the disclaimant either prior to or subsequent to the disclaimer. Thus, following the disclaimer of a specific pecuniary amount from a bequest or gift, the amount disclaimed and any income attributable to such amount must be segregated from the portion of the gift or bequest that was not disclaimed.

The segregation of assets making up the disclaimer of a pecuniary amount must be made on the basis of the fair market value of the assets on the date of the disclaimer or on a basis that is fairly representative of value changes that have occurred between the date of transfer and the date of the disclaimer.

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In the present case, Spouse proposes to make a pecuniary disclaimer of a specific portion of Decedent's community one-half interest in IRA D. This disclaimer will be described in terms of a formula that is expressed as a fraction, the numerator of which is the largest amount which, if allocated to the Article FIFTH trust, would not increase above zero the total federal estate tax and those state death taxes computed by reference to the credit allowable under § 2011 payable from all sources by reason of Decedent's death, after consideration of several enumerated items. The disclaimed property (and any income attributable to the disclaimed amount) will be segregated from the portion of IRA D that is not disclaimed and will continue to be held in IRA D while the nondisclaimed portions of IRA D will be transferred to another separate IRA. The payments from IRA D consisting of the disclaimed portion will be paid and will pass without direction on the part of Spouse to the trust created under Article FIFTH of decedent's will.

Additionally, under the Article FIFTH trust, Spouse has a power that is limited by an ascertainable standard to distribute income to herself "for her proper health, education, maintenance and support." Because the power is so limited, Spouse will not be treated as having the power to direct the beneficial enjoyment of the disclaimed property. See, § 25.2518-2(e) (5), Example 6.

We conclude, therefore, that if the other requirements of § 2518(b) are satisfied, the formula disclaimer by Spouse of a pecuniary portion of Decedent's community one-half interest in IRA D will be a qualified disclaimer for purposes of § 2518.

Additionally, Spouse does not possess a general power of appointment, within the meaning of § 2041(b) (1), over the Article FIFTH trust or the separate IRA, or a power or interest that would require inclusion of the trust or the IRA in the gross estate under sections 2036, 2037, or 2038. Therefore, upon Spouse's death, the property contained in the Article FIFTH trust, including the disclaimed portion of IRA D, will not be includible in the gross estate of Spouse.

**Ruling #3.**

Section 691(a) (1) of the Internal Revenue Code provides rules regarding -items of gross income in respect of a decedent that are not properly includible on a decedent's final income tax return, or any other prior return. Income in respect of a decedent is income to which a decedent was entitled as gross income, without further action, but which was not properly includible in computing decedent's taxable income for the taxable year ending with the date of death or any prior year. Under this section, all of these items are includible in the gross income, for the tax year received, of the estate or person who acquires the right to receive that amount by reason of the decedent's death.

Rev. Rul. 92-47, 1992-1 C.B. 198, states that distributions equaling the account balance at a decedent's death of a decedent's IRA, less any deductible contributions, are income in respect of a decedent to the

IRA's designated beneficiary in the year the designated beneficiary receives the distributions. Thus, in this instance the designated beneficiary has additional gross income in any year to the extent of the decedent's IRA share distributions.

Here, Decedent selected Spouse as the designated beneficiary of the IRA D share. Spouse, however, is disclaiming her right to a portion of Decedent's IRA D share. Spouse's disclaimer will relate back to Decedent's death and the testamentary trust, rather than Spouse, will be considered for § 691 purposes as the entity that had the right to receive the disclaimed portion of Decedent's IRA D share at Decedent's death. Moreover, because the designation of the testamentary trust as beneficiary of the disclaimed portion of Decedent's IRA D share is a nontestamentary transfer under State law, the testamentary trust is the only entity that ever had the right to receive distributions from the disclaimed portion of Decedent's IRA D share. Therefore, the testamentary trust will include in its gross income any distributions from the IRA D funded with the disclaimed portion of Decedent's IRA D share in the tax year received. Finally, as neither Decedent's estate nor Spouse is the designated beneficiary of the disclaimed portion of Decedent's IRA D share, neither the estate nor Spouse should include any of the disclaimed portion of Decedent's IRA D share in gross income.

We conclude that the testamentary trust has income in respect of a decedent, in the tax year received, for all distributions equalling the balance of the disclaimed portion of Decedent's IRA D share less any nondeductible contributions to IRA D. Neither Spouse nor Decedent's estate has any income in respect of a decedent from the disclaimed portion of Decedent's IRA D share.

#### **Rulings #4-8.**

Section 401(a) (9) of the Code provides that a trust shall not constitute a qualified trust under this subsection 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, 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 408(a) (6) of the Code provides that, under regulations prescribed by the Secretary, rules similar to the rules of § 401(a) (9) and the incidental death benefit requirements of § 401(a) shall apply to the

distribution of the entire interest of an individual for whose benefit the trust is maintained.

Section 401(a) (9) (C) of the Code provides 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.

Section 1.401(a) (9)-1 of the Proposed Income Tax Regulations, Q&As F-1(b) and (c), provides, in relevant part, that the distribution required to be made on or before the employee's required beginning date shall be treated as the distribution required for the employee's first distribution calendar year. A calendar year for which a minimum distribution is required is a distribution calendar year. The first calendar year for which a distribution is required is an employee's first distribution calendar year. The distribution required for distribution calendar years (other than a distribution required to be made on or before the employee's required beginning date) must be made on or before December 31 of that distribution calendar year.

Section 1.401(a) (9)-1 of the proposed regulations, Q&A A-7, provides, in pertinent part, that in the case of a transfer from one IRA to another IRA, the rules of § 1.401(a) (9)-l, Q&A G-4, apply for purposes of determining the account balance of, and the minimum distribution from, the IRAs involved.

Section 1.401(a) (9)-1 of the proposed regulations, Q&A G-4, provides, in relevant part, that in the case of a transfer of an amount of an employee's benefit from one plan to another, the general rule is that the benefit of the employee under the transferee plan is increased by the amount transferred. The transfer has no impact on the minimum distribution required to be made by the transferee plan in the calendar year in which the transfer is received. However, if a minimum distribution is required from the transferee plan for the following calendar year, the transferred amount must be considered to be part of the employee's benefit under the transferee plan.

Section 1.401(a) (9)-1 of the proposed regulations, Q&A D- 3(a) provides, in pertinent part, that for purposes of calculating the distribution period in § 401(a) (9) (A) (ii) (for distributions before death), the designated beneficiary will be determined as of the employee's required beginning date.

Section 1.401(a) (9)-1 of the proposed regulations, Q&A D- 3(d), provides, that, notwithstanding anything in Q&A D-3 to the contrary, the rules in Q&E E-5 apply if more than one beneficiary is designated with respect to an employee as of the applicable date (in paragraphs (a), (b), or (c)), on which the employee's designated beneficiary is determined or replaces another beneficiary (due to death or any other reason) after such date.

Section 1.401(a) (9)-1 of the proposed regulations, Q&A E- 5(a) provides, generally, that if an employee has more than one beneficiary as of the applicable date for determining the designated beneficiary, or if a designated beneficiary is added or replaces another beneficiary, the designated beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the distribution period.

Section 1.401(a) (9)-1 of the proposed regulations, Q&A E- 5(b) provides, in pertinent part, that, except as provided in paragraph (e) (1), if a beneficiary's entitlement to an employee's benefit is contingent on an event other than the employee's death (e.g. death of another beneficiary), such contingent beneficiary is considered to be a designated beneficiary for purposes of determining which designated beneficiary has the shortest life expectancy under paragraph (a).

Section 1.401(a) (9)-1 of the proposed regulations, Q&A E- 5(e)(1), provides that if a beneficiary's entitlement to an employee's benefit is contingent on the death of a prior beneficiary, such contingent beneficiary will not be considered a beneficiary for purposes of determining who is the designated beneficiary with the shortest life expectancy under paragraph (a) or whether a beneficiary who is not an individual is a beneficiary. This rule does not apply if the death occurs prior to the applicable date for determining the designated beneficiary.

Section 1.401(a) (9)—1 of the proposed regulations, Q&A D-5(a), provides that in the case, in which a trust is named as a beneficiary of an employee, all beneficiaries of the trust with respect to the trust's interest in the employee's benefit are treated as beneficiaries of the employee under the plan for purposes of determining the distribution period under § 401(a) (9) (A) (ii) if, as of the later of the date on which a trust is named as a beneficiary of the employee or the employee's required beginning date, and as of all subsequent periods during which the trust is named as a beneficiary, the following conditions are met:

- (1) The trust is a valid trust under state law or would be but for the fact that there is no corpus.*
- (2) The trust is irrevocable.*
- (3) The beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's benefit are identifiable from the trust instrument.*
- (4) A copy of the trust instrument is provided to the plan.*

Section 1.401(a) (9)-1 of the proposed regulations, Q&A D-5(b), provides, in pertinent part, if, as of any date on or after the required beginning date, a trust is named as a beneficiary of the employee and the requirements of paragraph (a) are not met, the employee will be treated as not having a designated beneficiary under the plan for purposes of § 401(a) (9) (A) (ii).

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With specific reference to the fourth through seventh ruling requests, § 408(d) (1) provides, generally, that any distribution from an IRA shall be taxed in accordance with the rules of § 72.

Sections 408(d) (3) (A), and (C), provide that the surviving spouse of a deceased's IRA holder may roll over a payment or distribution from the deceased's IRA no later than 60 days after the date on which she receives the payment or distribution. Section 408(d) (1) does not apply to an amount properly rolled over

Section 408(d) (3) (B) provides that § 408(d)(3)(A) (the rollover rules) does not apply to any amount described in § 408(d) (3) (A) (i) if at any time during the one-year period ending on the day of such receipt, such individual received any other amount described in such paragraph from an IRA which was not includible in her gross income because of the application of § 408(d) (3) (A).

Section 1.408-8, Q&A-4(b), of the proposed regulations provides, in relevant part, that in the case of an individual dying after December 31, 1983, the individual's surviving spouse may elect to treat the spouse's entire interest in the trust as the spouse's own account. If the surviving spouse makes such an election, the surviving spouse's interest in the account would then be subject to the distribution requirements of § 401(a) (9) (A) of the Code rather than those of § 401(a) (9) (B). The result of such an election is that the surviving spouse shall then be considered the individual for whose benefit the trust is maintained.

We believe that it is a reasonable interpretation of the Code and proposed regulations to permit a custodian to custodian rollover transfer from one IRA (IRA D) to another IRA (the IRA set up and maintained by Spouse on her behalf) of less than the full amount standing in IRA D at Decedent's death. Furthermore, we believe that it is appropriate to treat such transfer as an election on the part of Spouse to treat the transferred portion of IRA D as her own IRA.

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

4. The custodian to custodian transfer of Spouse's community interest in IRA D at her direction constitutes an election to treat such transferred portion as Spouse's own and therefore qualifies as a tax-free transfer pursuant to § 408(d) (3) (A) and is not subject to the limitation found in § 408(d) (3) (B);

With specific respect to your fifth ruling request, since Spouse's custodian to custodian transfer of her community property interest in IRA D constituted an election to treat said transferred portion as her own IRA, pursuant to the Qs&As of § 1.401(a) (9)-I of the proposed regulations referenced herein, Spouse may name the designated beneficiary(ies) of her transferee IRA no later than her required beginning date, and the account balance used to determine her minimum required distribution for 1996, her initial

distribution calendar year, will be the IRA's account balance as of December 31, 1995.

As noted previously, 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 distribution period.

Section 1.401(a) (9)-1 of the proposed regulations, Q&A H-2, provides rules for determining which life expectancies may be used for purposes of determining minimum required distributions in the case where a plan is divided into separate shares (as that term is defined in the Q&A) as of the required beginning date.

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

5. Spouse may designate a beneficiary (ies) for Spouse's IRA which represents Spouse's community one-half interest in IRA D and that the required minimum distributions may be determined in accordance with § 401(a) (9) (A) with the initial distribution year being 1996. Furthermore, the life of the beneficiary (or lives of the beneficiaries, if applicable) designated by Spouse may be used in determining the minimum required distribution amounts.

With respect to your sixth and seventh ruling requests, we believe that Spouse's December 7, 1995, custodian to custodian transfer of her community property interest in IRA D does not preclude her subsequently transferring, via a direct, custodian to custodian transfer, a portion of Decedent's community property interest in IRA D. Furthermore, said transfer will constitute an election to treat said transferred portion of IRA D as her own IRA. Additionally, until said IRA D amount is actually transferred to Spouse's IRA, it continues to be treated as a portion of IRA D and must be distributed in accordance with the § 401(a) (9) minimum required distribution rules (as made applicable to IRAs because of § 408(a) (6)) from IRA D. However, once the transfer is accomplished, the transferred amounts become part of the account balance of Spouse's IRA, and must be considered in calculating Spouse's minimum required distributions from her IRA in the year following the year of transfer and thereafter.

Thus, with respect to your sixth and seventh ruling requests, we conclude as follows:

6. The custodian to custodian transfer of the portion of Decedent's community property interest in IRA D that was not disclaimed to Spouse's IRA at her direction constitutes an election to treat such transferred portion as her own and therefore qualifies as a tax-free transfer pursuant to § 408(d)(3)(A) and is not

subject to the limitation found in § 408(d) (3) (B); and

7. The amount transferred pursuant to the custodian to custodian transfer described in ruling request 6 becomes part of Spouse's IRA and will be subject to all elections with respect thereto. Furthermore, such transferred amount will be used in calculating the minimum required distribution in the year following the year of transfer.

With specific reference to your eighth ruling request, § 401(a) (9) (B) (i) provides that, where distributions of an employee's interest have begun in accordance with subparagraph (A) (ii) and the employee dies before his interest has been distributed to him, the remaining portion of such interest will be distributed at least as rapidly as under the method of distribution being listed under subparagraph (A) (ii) as of the date of death.

Section 401(a) (9) (D) provides that L for purposes of § 401(a) (9), the life expectancy of an employee and the employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.

Section 1.401(a) (9)-i of the proposed regulations, Q&A E-7(c), provides that an election to recalculate life expectancies must be made no later than the time of the first required distribution under § 401(a)(9). As of the date of the first required distribution under § 401(a) (9), a method (either recalculation or no recalculation) which is in effect with respect to an employee (or spouse) must be irrevocable with respect to the employee (or spouse) and must apply to all subsequent years.

Section 1.401(a) (9)-i of the proposed regulations, Q&A E-8, provides that if a life expectancy (or life expectancies) are being recalculated, at the death of the employee (or the employee's spouse), the life expectancy of the deceased will be reduced to zero in the calendar year following the year of death. Thus, if the employee dies, for determining the minimum distribution for such calendar year and subsequent calendar years, the applicable life expectancy is the applicable life expectancy of the designated beneficiary.

Section 37A of the Probate code of the Revised Civil Statutes of State provides, in pertinent part, that:

Any person...who may be entitled to receive any property as a beneficiary and who intends to effect disclaimer irrevocably on or after September 1, 1977, of the whole or any part of such property shall evidence same as herein provided. A disclaimer evidenced as provided herein shall be effective as of the death of decedent and shall relate back for all purposes to the death of the decedent and is not subject to

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the claims of any creditor of the disclaimant. Unless the decedent's will provides otherwise, the property subject to the disclaimer shall pass as if the person disclaiming or on whose behalf a disclaimer is made had predeceased the decedent...

Section 4974(a) imposes a 50 percent excise tax on the difference between the amount of a minimum required distribution under any qualified plan for a taxable year and the amount actually distributed for such calendar year.

Section 4974(b) provides, in pertinent part, that the term "minimum required distribution" means the amount required to be distributed during a taxable year pursuant to § 408(a) (6).

Section 4974(c) defines the term "qualified retirement plan" to include either an individual retirement account under § 408(a) or an individual retirement annuity under § 408(b).

Your authorized representative asserts that the disclaimer referenced herein will meet the requirements of State law. Furthermore, he asserts that the disclaimer will be in writing, that Spouse has not received any benefit from the disclaimed property, including the disclaimed portion of IRA D, and that the disclaimer will be made within the time period of § 2518(b) (2). Thus, under the facts in this case, the disclaimer, which will be a qualified disclaimer for purposes of § 2518 disclaimer, will be treated as valid for purposes of § 401(a)(9).

In this case, Spouse is not deceased. Furthermore, pursuant to the section of the State Statutes cited herein, we do not believe that it is appropriate to treat her as deceased for purposes of § 401(a) (9).

In this case, based on the above representations, we believe that there has been compliance with the "designated beneficiary" requirements of § 401(a) (9) and of § 1.401(a)(9)-I of the proposed regulations.

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

8. Proposed payments from IRA D funded with the disclaimed portion of IRA D to the Article FIFTH Trust, which will be based on Spouse's recalculated life expectancy will not adversely affect the § 408 qualified status of IRA D and will meet the minimum required distribution rules of § 401(a) (9) which are applicable to IRAs pursuant to § 408(a)(6). As a result, said distributions will not be subject to the tax imposed by § 4974.

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This ruling letter assumes that IRA D and Spouse's IRA referenced herein either met or will meet the requirements of §408(a) at all times relevant thereto.

Except as we have specifically ruled herein, we express no opinion as to the consequences of this transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(j) (3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

Assistant Chief Counsel

(Passthroughs and Special

Industries)

George Masnik

Chief, Branch 4

Enclosure

Copy for section 6110 purpose