Taxation of Supplemental Needs Trusts

National Academy of Elder Law Attorneys

Introduction to Special Needs and Elder Law

Jersey City, New Jersey

November 6, 2009

Presented By:

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I. Introduction

Supplemental Needs Trusts ("SNTs") are trusts created for the benefit of persons with disabilities to provide extra services or items not provided by public benefits, such as Medicaid, Supplemental Security Income ("SSI"), HUD subsidized housing, or other benefits. Many public benefits have strict asset and/or income limitations, and provide only certain necessities. The SNT provides the beneficiary with items not supplied by public benefits, such as travel, entertainment, certain dental services and other non-covered items, while preserving public benefits.

While income for tax purposes under Internal Revenue Code Section 61 (a) includes, but is not limited to, compensation for services, business income, capital gains, interest, dividends, royalties, alimony, annuities and pensions, income for purposes of SSI includes earned income as well as unearned income, such as, inter alia, support and maintenance furnished in cash or in kind, inheritances and other payments that would not be considered income for tax purposes.

II. Grantor Trusts

A grantor trust is a type of trust under which the grantor keeps or retains a level of control in the trust which causes the grantor to be considered the owner of the trust property for income tax purposes and therefore the income would be taxed at the grantor's income tax rates. A grantor is commonly thought of as the Settlor, or the person who created the trust. However, an individual who funds an SNT may be considered the grantor for tax purposes even if the trust instrument lists another person as grantor.

In Revenue Rule 83-25, 1983-1 C.B. 116, the IRS ruled that a minor beneficiary of a trust established by court order to hold the beneficiary's litigation award was the grantor for purposes of federal income tax law:

> "[a]s the owner of the damages awarded, … [the taxpayer who funded the SNT] ... is considered the grantor of the trust to which the damages were transferred ... Because under the provisions of the trust, the income and corpus of the trust will be distributed to [him] ... or held and accumulated for future distribution to ... [him] ... at the discretion of a non-adverse party, ... [he] … will be treated as the owner of the trust pursuant to section 677(a) of the Code ... " Id.

For income tax purposes, the grantor of the trust may be the beneficiary who furnished the trust funds in a self-settled trust, which is not necessarily the individual named as grantor or Settlor in the trust agreement. For example, a self-settled first party trust for a beneficiary of a negligence award may be created by that beneficiary's parent for the beneficiary. Although the parent is called the grantor in the trust agreement, if the funds of the trust were contributed by the beneficiary, the grantor trust rules would apply to the beneficiary who funded the trust.

In creating trusts, practitioners often include provisions to have the trusts treated as grantor trusts for income tax purposes. Some examples of provisions contained in these trusts that cause them to be considered grantor trusts are:

a. the power to reacquire the trust corpus by substituting property of an equivalent value (IRC 675[4]), or

b. where income is distributed to the grantor or held or accumulated for future distributions to the grantor without the approval or consent of an adverse party. (IRC 677[a]).

A list of the grantor trust provisions may be found in Internal Revenue Code Section 673, 674, 675, 676 and 677. Some of these provisions, however, would not be appropriate for a supplemental needs trust as they may render the trust assets "available" for purposes of public benefits; for example, the power of the beneficiary to revoke under IRC Section 675 would render the entire trust available for public benefits purposes.

A First Party SNT is a Supplemental Needs Trust created by the person with a disability. It typically holds the proceeds from the settlement of a lawsuit or an outright inheritance from a third party. The trust can be created for a beneficiary under the age of sixty-five (65), and must meet the requirements of 42 U.S.C. Section 1396 p (d) (4) (A) in order for the beneficiary to be able to maintain his or her benefits. The section requires, among other things, a payback provision for Medicaid assistance received.

First Party SNTs are often characterized as grantor trusts for income tax purposes because the grantor is the source of the trust assets and retains a beneficial interest in the income and principal, even if that beneficial interest is restricted because it is subject to the Trustee's discretion. Many times the person with a disability will be in a low income tax bracket, and will have large medical expenses, so having the trust's income taxed to the beneficiary may be advisable.

A Third Party SNT is a Supplemental Needs Trust created by someone other than the person with a disability, and funded with the assets of someone other than the beneficiary with a disability. These trusts are often created by the parents of a special needs person, and can be created during the grantor's lifetime or in the grantor's will or revocable trust.

If the third party trust is created during the grantor's lifetime, it can be drafted as a grantor trust or a non-grantor trust. If it is drafted as a grantor trust, the income from the SNT would be taxable to the third party grantor. This would allow the income to be taxed at presumably lower individual tax rates.

If the trust is drafted as a non-grantor trust, the lifetime Third Party SNT would report its income on its own tax return and pay taxes on its income, and would be subject to the compressed tax rates for trusts. However, if its income is modest, there may be an advantage in drafting it as a non-grantor trust so that it would qualify for disability trust status, as described in the next section.

III. <u>Non-Grantor Trusts</u>

A non-grantor special needs trust will typically be a third party trust in which the grantor of the trust retains none of the powers listed in IRC §671 – 679. If a SNT is established in a testamentary trust or via a bequest at the death of the grantor, the trust will always be a non-grantor trust. Most third party trusts created during the grantor's lifetime will also be non-grantor trusts, unless the drafter makes an affirmative decision to draft the SNT as a grantor trust for tax purposes. In making this drafting choice, attorneys should be aware that non-grantor status may sometimes be advantageous for the purpose of qualifying a SNT as a qualified disability trust, which has an additional exemption amount, for example, in 2009 the exemption for a qualified disability trust is $3,650.00.

A. Simple Trusts

Simple trusts are trusts which are either required to or actually do distribute all of their income annually. Given the discretionary distribution requirements applicable to SNTs, it is highly unlikely that a SNT would be categorized as a simple trust on its face, but it may be treated as such for tax purposes in any given year that it distributes all of its distributable net income to the beneficiary.

When a simple trust files its annual return, no income will be taxed on the 1041. All income will be shown on the 1041 and passed out to the beneficiary on form K-1 for inclusion on the beneficiary's return.

B. Complex Trusts

Any non-grantor trust where income is retained rather than being distributed is a complex trust. This results in the income being taxed to the trust, rather than the beneficiary. The income is reported on the trust's 1041 and is taxed on that return at the trust's tax rates.

Qualified Disability Trusts

IRC §642(b)(C) was added to the Code in 2001, creating qualified disability trusts. These rules provide an additional exemption amount for the trust. If a trust is a qualified disability trust, it can claim an exemption equal to the personal exemption (expected to be $3,650 in 2009), rather than the $100 exemption generally applicable to complex trusts. Given the condensed tax rates applicable to trusts, this can provide a significant tax advantage. To be considered a Qualified Disability Trust, the trust must meet the following requirements:

A. Sole Benefit Trust

   In order to be a "Qualified Disability Trust" a trust must be for the "sole benefit" of a disabled person during that individual's lifetime. Although the IRS has not defined this requirement, the Social Security POMS considers "sole benefit" to refer to a trust where no other person or entity can benefit from the transferred resources for the remainder of the beneficiary's life.

B. Under 65

   The beneficiary must be under age 65 at the time the trust is created.

C. Disabled

   The beneficiary must be disabled according to Social Security standards. While this is not a difficult requirement to meet if the beneficiary is receiving some form of Social Security disability benefits, if, for any reason, the beneficiary has not been officially deemed disabled by the Social Security Administration, the trustee should be prepared to prove the disability.

IV. **<u>Tax forms and Reporting Requirements</u>**

A. Self Settled Trusts

As discussed above, self-settled SNTs are generally considered to be grantor trusts for tax purposes. As such, there is no requirement to obtain a separate taxpayer identification number (TIN) or to file separate income tax returns for the trust.

However, many practitioners find it easier when dealing with financial institutions to obtain a separate TIN and file "informational" tax returns for the trust. A statement should be attached to the return showing that the income will be reflected on the grantor's individual return.

B. Third Party Trusts

A third party trust will generally be treated as either a complex or qualified disability trust for income tax purposes. In either scenario, the trust will be required to obtain a TIN and file form 1041 annually. This filing will include a form K1 for the beneficiary, detailing any income and deductions which are to be distributed to the beneficiary.

C. How to obtain forms

The easiest place to obtain tax forms is from the IRS website at www.IRS.gov. All income, gift and other tax forms referenced in this paper are available there, many in PDF fillable forms.

When requesting a TIN for a trust, the IRS website features Form SS4 in a format that can be completed through an online questionnaire and submitted electronically to obtain a TIN virtually instantly. Your office should retain a copy of the form, which will be generated at the end of the process.

D. Software

There are also a number of software programs which make completing the forms and calculating taxes easier. Some programs also interface with fiduciary accounting software for easier data gathering.

E. Tax rates

For 2009, income tax rates for a single individual are as follows:

Income	**Rate**
$0 - $8,350	10%
$8,351 - $33,950	15%
$33,951 - $82,250	25%
$82,251 - $171,550	28%
$171,550 - $372,950	33%
Over $372,950	35%

2009 income tax rates for trusts are:

Income	**Tax**
$0 - $2,300	15%
$2,301 - $5,350	25%
$5,351 - $8,200	28%
$8,201 - $11,150	33%
Over $11,150	35%

IV. <u>Gift Tax Issues</u>

If a parent or other individual wishes to create a third party special needs trust for the benefit of a disabled individual during the grantor's lifetime, the grantor will need to take into account the possible gift tax ramifications of the transfer. Gift tax consequences are separate and distinct from any Medicaid transfer penalties that could result from the gift.

1. Revocable vs. Irrevocable trust

   If the trust is structured as a revocable trust, there will not be a completed gift for gift tax purposes. The trust will also not qualify for qualified disability trust status. The trust will be taxed as a grantor trust. Of course, if one creates a revocable trust for oneself, the assets are available for public benefits purposes. Upon the grantor's death, the trust becomes irrevocable.

   If a trust is structured as an irrevocable trust, and if the grantor has not retained any incidents of ownership, the transfer to the trust will be a completed gift, resulting in gift tax consequences.

2. Gift tax exemption

   For 2009, each donor has an annual gift tax exclusion amount of $13,000 per recipient for gifts of a present interest. Since a contribution to a trust is not a gift of a present interest, to make it a gift of a present interest one could give a beneficiary the right to withdraw a certain amount for a short period (usually 30-60 days) after it has been contributed. This could make it a gift of a present interest. <u>See, Crummey v. Comm'r</u>, 397 F. 2d 82 (9^{th} Circ. 1968), Rev. Rule 73-405, 1973-2 C.B. 321. It is not advisable to provide the person with a disability the right to withdraw the funds placed into the trust, however, as that amount would be considered "available" to the beneficiary for public benefits purposes.

However, a Crummey Power can be given to a remainder beneficiary. See, Estate of Christofani v. Comm'r, 97 T.C. 74 (1991), AOD 1996-010.

Gifts which are not of a "present interest" are not eligible for the $13,000.00 annual exclusion per donee. As such, the grantor would need to file a form 709 gift tax return and apply a portion of his or her lifetime gift tax exemption.

The lifetime gift tax exemption is currently One Million Dollars ($1,000,000.00). If the lifetime gifts (not including the excluded amount of $13,000.00 per recipient per year) exceed $1,000,000.00, actual gift tax would be due.

V. Estate Tax

Whether a Third Party SNT will be included in the estate of the grantor for estate tax purposes depends on how the trust is drafted. If it is created during the grantor's lifetime and is structured as a completed gift, the assets of a Third Party SNT would not be included in the grantor's estate at death, assuming that the grantor retained no beneficial interest in the trust which would pull the assets back into the grantor's estate such as, for example, the right to income for life under IRC Section 2036, or incidents of ownership under IRC Section 2042.

If the Third Party SNT was drafted as part of a revocable trust which became irrevocable only at the grantor's death, and under which distributions would not be made to the beneficiary until after the grantor's death, or if the grantor retained a limited power of appointment over an irrevocable trust to make it incomplete for gift tax purposes, then the assets of the Third Party SNT would be included in the grantor's estate at his or her death.

The current federal estate tax exemption in 2009 is $3,500,000.00, and is scheduled to be unlimited in year 2010 and go back to $1,000,000.00 in year 2011. Of course, many states also have their own, different, exclusions and tax rates. We are expecting legislation to change the federal exemption.

VI. Income Tax Treatment May Be Different than Estate Tax Treatment

The fact that a trust is treated as a grantor trust for income tax purposes does not mean that it will necessarily be included in the grantor's estate for estate tax purposes. There is no absolute correlation between income tax grantor trust rules and estate tax.

A decedent's gross estate includes the value of property or of an interest in property transferred by the decedent, whether in trust or otherwise, if the decedent reserved or retained for his or her life the use, possession, right to income or other enjoyment of the property or the right alone to designate the people who shall possess or enjoy the transferred property or the income.

If trust income is taxed to the grantor instead of to the trust by virtue of the grantor trust rules, and if the trust is not included in the grantor's estate for estate tax purposes, both the gift tax, upon the creation of the trust and the income tax payable on the income of the trust reduce the grantor's taxable estate. The various code sections that would include property in a taxpayer's gross estate for estate tax purposes are the following:

1. Section 2036 – Transfers with retained life estate.
2. Section 2037 – Transfers where the decedent retained a five percent (5%) reversion.
3. Section 2038 – Revocable trusts.
4. Section 2039 – Certain annuities.
5. Section 2041 – General powers of appointment.
6. Section 2042 – Certain life insurance proceeds where decedent retained incidents of ownership.

In addition to the above, section 2035 brings into the estate certain gifts made within 3 years of a taxpayer's death, and section 2043 applies to transfers without consideration under sections 2035, 2036, 2037, 2038 and 2041. These rules, which pertain to the inclusion in the taxpayer's gross estate for estate tax purposes, are different from the grantor trust rules which are applicable for income tax purposes.

If a parent creates a Third Party SNT to benefit his or her adult child, and that parent acts as trustee while retaining the discretionary power to accumulate income, this trust would be taxed in the parent's estate for estate tax purposes unless the discretion was limited by an ascertainable standard. [See, Estate of Marie Rott v. US, 321 F Supp 654 (D.C. Eastern District of Missouri 1971)].

In Rott, supra, the decedent had established irrevocable trusts for her grandchildren during her lifetime, but retained the right to either accumulate or distribute income to them, in her discretion. The question before the Court was whether this right to accumulate income would be considered "the right to designate the persons who would possess or enjoy the property or the income from the property previously transferred in trust." The Court discussed the fact that the power to accumulate or distribute was not governed by an ascertainable standard, and held: "the settler had, by retaining the power to accumulate or distribute income, the power to deny the beneficiaries the immediate enjoyment of the property and the conditioning of their eventual enjoyment upon surviving the termination of the trust. Under these circumstances… the trust... should be included in her estate for estate tax purposes." Id. See, also, Estate of John A. Alexander, 81 T.C. 757 (1983).

A reserved power to substitute other property of equal value for property already held in the trust would make the trust a grantor trust for income tax purposes, but since it is not a power to alter, amend or revoke, it does not make the trust includable for estate tax purposes. Although economic control over the trust may make the trust income taxable to the grantor during his or her lifetime, the trust itself is not, on that ground alone, includable in the grantor's taxable estate for estate tax purposes.

VII. Having IRAs Payable to Supplemental Needs Trusts

1. In General

   The basic rules for naming a trust as a beneficiary begin with the question of whether the IRA owner had reached age 70 ½ (the "required minimum distribution date") prior to his or her death. If the IRA owner had reached this age and had begun his or her minimum required distributions, the trust has the option of paying out over the remaining life expectancy of the IRA owner. See, IRS Regulation 1.401 (a) (9)-5, A-5. However, if the owner would like to have the payments over the life expectancy of the beneficiary, certain rules need to be met. If the owner dies before reaching his or her required minimum distribution date, the trust listed as beneficiary of that IRA must qualify under one of the rules discussed below or it must withdraw the IRA within a five year period. See, IRC Section 401 (a) (9) (B) (ii).

2. Determining the Payout

   There are two basic ways to determine the payout of an IRA to a trust and its beneficiaries. The first is if the trust is determined to be a "conduit trust." Under the conduit trust rules, the trustee is required to pay out the annual required minimum distributions to a specified beneficiary or beneficiaries, and the oldest beneficiary's life expectancy is used as the measuring life for the required minimum distributions. Remainder persons are not taken into account for the measuring life.

If the terms of the trust do not mandate payout of the annual required minimum distributions, the trust is an "accumulation" trust and must meet the requirements of a "see through" trust in order to receive a maximum stretch of benefits to be payable over the life of the oldest beneficiary, including remainder people. If the trust fails to qualify as a "see through" trust, the IRA must be withdrawn and taxed over a five year period.

In order for a trust to qualify as a "see through" trust, it must meet the requirements of a "designated beneficiary" under IRC §401(a)(9). To do so, the trust must meet the following requirements:

(1) The trust must be valid under state law (or would be valid under state law if it had a corpus)

(2) The trust must be irrevocable either by its terms of by reason of the death of the IRA owner

(3) The beneficiaries must be identifiable from the trust instrument

(4) A copy of the trust and a complete list of all beneficiaries (including contingent and remainder beneficiaries) must be provided to the plan administrator. <u>See</u>, IRC 1.401 (a) (9)-4.

If the trust qualifies as a "see-through" trust, the trust may take required minimum distributions over the life expectancy of the oldest beneficiary, if all of the beneficiaries are individuals. If any charities or other entities are beneficiaries, the trust must use the five year distribution rule, since unlike people, such entities do not have life expectancies.

3. Third Party Special Needs Trusts

If a parent or other individual wishes to name a special needs trust as the beneficiary of an IRA for an individual with a disability, the SNT must be carefully drafted to avoid negative tax treatment.

Under the "see through" trust rules, the trust would use the life expectancy of the oldest beneficiary. Therefore, it would be beneficial, if possible, to draft the trust so that the person with a disability is the oldest beneficiary. This may require skipping a generation so that the remainder beneficiaries are the nieces and nephews of the disabled beneficiary rather than the siblings.

If a charity or other entity is the remainder beneficiary, the trust will need to withdraw the funds within a five year period.

The issue of how an IRA placed into a grantor trust must be distributed is considered in PLR 200708084 which examines a situation where a beneficiary of an IRA was an irrevocable trust. The trust was held to meet the requirements of 401(a)(9)(A) as a "see-through" trust and distributions were to be made pursuant to the rules of IRC 401(a)(9)(B)(iii) and the regulations thereunder. The IRA was held to be distributed according to the life expectancy of the oldest beneficiary of the trust. A copy of the PLR is attached.

4. Self Settled Special Needs Trusts
    a. Inherited IRAs

Recent IRS Private Letter Rulings 200620025 provides guidance as to how self settled special needs trusts can be treated as owners of inherited individual retirement accounts. A Medicaid recipient was named as a beneficiary of an IRA. Following the death of the IRA owner, the beneficiary's legal guardian petitioned the court to create a trust under 42 USC 1396p(d)(4)(A). As required by that section of the United States Code, the trust provided for fully discretionary distributions of income and principal during the lifetime of the beneficiary. Any income not distributed was allowed to be accumulated and added to principal. At the death of the beneficiary, the trust was required to first repay the state for any benefits paid on behalf of the beneficiary. Any remaining trust assets were to be paid to the beneficiary's heirs at law as determined by the intestacy laws of the beneficiary's state of residency.

The guardian sought to transfer the beneficiary's share of the IRA to the self settled special needs trust. The IRS ruled that the trust qualified as a grantor trust under the rules of IRC 671 and 677(a). The Service relied on Revenue Ruling 85-13 for the proposition that if the trust is a grantor trust, the grantor is treated as the owner of all assets in the trust for federal tax purposes. Therefore, according to this PLR, the grantor is the owner of the IRA. The PLR did not address the issue of payouts and at what rate the IRA must be distributed. A copy of the PLR is attached.

b. Individual IRAs

By the same analysis, an individual with a disability theoretically should also be able to transfer his or her own IRA to a self-settled special needs trust. However, many brokerage firms and other IRA trustees are often reluctant to agree to retitling the IRA into the name of the trust, and case law is not clear on the treatment of this.

One of the authors, Jennifer L. VanderVeen, Esq., of Greenwood, Indiana, has requested a Private Letter Ruling regarding the titling of an IRA into a self-settled special needs trust. As of the date of the writing of this article in September 2009, the IRS has not yet responded to this request. A redacted copy of the PLR is attached.

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A. Sole Benefit Trust

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However, many practitioners find it easier when dealing with financial institutions to obtain a separate TIN and file "informational" tax returns for the trust. A statement should be attached to the return showing that the income will be reflected on the grantor's individual return.

B. Third Party Trusts

A third party trust will generally be treated as either a complex or qualified disability trust for income tax purposes. In either scenario, the trust will be required to obtain a TIN and file form 1041 annually. This filing will include a form K1 for the beneficiary, detailing any income and deductions which are to be distributed to the beneficiary.

C. How to obtain forms

The easiest place to obtain tax forms is from the IRS website at www.IRS.gov. All income, gift and other tax forms referenced in this paper are available there, many in PDF fillable forms.

When requesting a TIN for a trust, the IRS website features Form SS4 in a format that can be completed through an online questionnaire and submitted electronically to obtain a TIN virtually instantly. Your office should retain a copy of the form, which will be generated at the end of the process.

D. Software

There are also a number of software programs which make completing the forms and calculating taxes easier. Some programs also interface with fiduciary accounting software for easier data gathering.

E. Tax rates

For 2009, income tax rates for a single individual are as follows:

Income	**Rate**
\$0 - \$8,350	10%
\$8,351 - \$33,950	15%
\$33,951 - \$82,250	25%
\$82,251 - \$171,550	28%
\$171,550 - \$372,950	33%
Over \$372,950	35%

2009 income tax rates for trusts are:

Income	**Tax**
\$0 - \$2,300	15%
\$2,301 - \$5,350	25%
\$5,351 - \$8,200	28%
\$8,201 - \$11,150	33%
Over \$11,150	35%

IV. Gift Tax Issues

If a parent or other individual wishes to create a third party special needs trust for the benefit of a disabled individual during the grantor's lifetime, the grantor will need to take into account the possible gift tax ramifications of the transfer. Gift tax consequences are separate and distinct from any Medicaid transfer penalties that could result from the gift.

1. Revocable vs. Irrevocable trust

   If the trust is structured as a revocable trust, there will not be a completed gift for gift tax purposes. The trust will also not qualify for qualified disability trust status. The trust will be taxed as a grantor trust. Of course, if one creates a revocable trust for oneself, the assets are available for public benefits purposes. Upon the grantor's death, the trust becomes irrevocable.

   If a trust is structured as an irrevocable trust, and if the grantor has not retained any incidents of ownership, the transfer to the trust will be a completed gift, resulting in gift tax consequences.

2. Gift tax exemption

   For 2009, each donor has an annual gift tax exclusion amount of $13,000 per recipient for gifts of a present interest. Since a contribution to a trust is not a gift of a present interest, to make it a gift of a present interest one could give a beneficiary the right to withdraw a certain amount for a short period (usually 30-60 days) after it has been contributed. This could make it a gift of a present interest. See, Crummey v. Comm'r, 397 F. 2d 82 (9th Circ. 1968), Rev. Rule 73-405, 1973-2 C.B. 321. It is not advisable to provide the person with a disability the right to withdraw the funds placed into the trust, however, as that amount would be considered "available" to the beneficiary for public benefits purposes.

However, a Crummey Power can be given to a remainder beneficiary. See, Estate of Christofani v. Comm'r, 97 T.C. 74 (1991), AOD 1996-010.

Gifts which are not of a "present interest" are not eligible for the $13,000.00 annual exclusion per donee. As such, the grantor would need to file a form 709 gift tax return and apply a portion of his or her lifetime gift tax exemption.

The lifetime gift tax exemption is currently One Million Dollars ($1,000,000.00). If the lifetime gifts (not including the excluded amount of $13,000.00 per recipient per year) exceed $1,000,000.00, actual gift tax would be due.

V. Estate Tax

Whether a Third Party SNT will be included in the estate of the grantor for estate tax purposes depends on how the trust is drafted. If it is created during the grantor's lifetime and is structured as a completed gift, the assets of a Third Party SNT would not be included in the grantor's estate at death, assuming that the grantor retained no beneficial interest in the trust which would pull the assets back into the grantor's estate such as, for example, the right to income for life under IRC Section 2036, or incidents of ownership under IRC Section 2042.

If the Third Party SNT was drafted as part of a revocable trust which became irrevocable only at the grantor's death, and under which distributions would not be made to the beneficiary until after the grantor's death, or if the grantor retained a limited power of appointment over an irrevocable trust to make it incomplete for gift tax purposes, then the assets of the Third Party SNT would be included in the grantor's estate at his or her death.

The current federal estate tax exemption in 2009 is $3,500,000.00, and is scheduled to be unlimited in year 2010 and go back to $1,000,000.00 in year 2011. Of course, many states also have their own, different, exclusions and tax rates. We are expecting legislation to change the federal exemption.

VI. Income Tax Treatment May Be Different than Estate Tax Treatment

The fact that a trust is treated as a grantor trust for income tax purposes does not mean that it will necessarily be included in the grantor's estate for estate tax purposes. There is no absolute correlation between income tax grantor trust rules and estate tax.

A decedent's gross estate includes the value of property or of an interest in property transferred by the decedent, whether in trust or otherwise, if the decedent reserved or retained for his or her life the use, possession, right to income or other enjoyment of the property or the right alone to designate the people who shall possess or enjoy the transferred property or the income.

If trust income is taxed to the grantor instead of to the trust by virtue of the grantor trust rules, and if the trust is not included in the grantor's estate for estate tax purposes, both the gift tax, upon the creation of the trust and the income tax payable on the income of the trust reduce the grantor's taxable estate. The various code sections that would include property in a taxpayer's gross estate for estate tax purposes are the following:

1. Section 2036 – Transfers with retained life estate.
2. Section 2037 – Transfers where the decedent retained a five percent (5%) reversion.
3. Section 2038 – Revocable trusts.
4. Section 2039 – Certain annuities.
5. Section 2041 – General powers of appointment.
6. Section 2042 – Certain life insurance proceeds where decedent retained incidents of ownership.

In addition to the above, section 2035 brings into the estate certain gifts made within 3 years of a taxpayer's death, and section 2043 applies to transfers without consideration under sections 2035, 2036, 2037, 2038 and 2041. These rules, which pertain to the inclusion in the taxpayer's gross estate for estate tax purposes, are different from the grantor trust rules which are applicable for income tax purposes.

If a parent creates a Third Party SNT to benefit his or her adult child, and that parent acts as trustee while retaining the discretionary power to accumulate income, this trust would be taxed in the parent's estate for estate tax purposes unless the discretion was limited by an ascertainable standard. [See, Estate of Marie Rott v. US, 321 F Supp 654 (D.C. Eastern District of Missouri 1971)].

In Rott, supra, the decedent had established irrevocable trusts for her grandchildren during her lifetime, but retained the right to either accumulate or distribute income to them, in her discretion. The question before the Court was whether this right to accumulate income would be considered "the right to designate the persons who would possess or enjoy the property or the income from the property previously transferred in trust." The Court discussed the fact that the power to accumulate or distribute was not governed by an ascertainable standard, and held: "the settler had, by retaining the power to accumulate or distribute income, the power to deny the beneficiaries the immediate enjoyment of the property and the conditioning of their eventual enjoyment upon surviving the termination of the trust. Under these circumstances… the trust... should be included in her estate for estate tax purposes." Id. See, also, Estate of John A. Alexander, 81 T.C. 757 (1983).

A reserved power to substitute other property of equal value for property already held in the trust would make the trust a grantor trust for income tax purposes, but since it is not a power to alter, amend or revoke, it does not make the trust includable for estate tax purposes. Although economic control over the trust may make the trust income taxable to the grantor during his or her lifetime, the trust itself is not, on that ground alone, includable in the grantor's taxable estate for estate tax purposes.

VII. Having IRAs Payable to Supplemental Needs Trusts

1. In General

The basic rules for naming a trust as a beneficiary begin with the question of whether the IRA owner had reached age 70 ½ (the "required minimum distribution date") prior to his or her death. If the IRA owner had reached this age and had begun his or her minimum required distributions, the trust has the option of paying out over the remaining life expectancy of the IRA owner. See, IRS Regulation 1.401 (a) (9)-5, A-5. However, if the owner would like to have the payments over the life expectancy of the beneficiary, certain rules need to be met. If the owner dies before reaching his or her required minimum distribution date, the trust listed as beneficiary of that IRA must qualify under one of the rules discussed below or it must withdraw the IRA within a five year period. See, IRC Section 401 (a) (9) (B) (ii).

2. Determining the Payout

There are two basic ways to determine the payout of an IRA to a trust and its beneficiaries. The first is if the trust is determined to be a "conduit trust." Under the conduit trust rules, the trustee is required to pay out the annual required minimum distributions to a specified beneficiary or beneficiaries, and the oldest beneficiary's life expectancy is used as the measuring life for the required minimum distributions. Remainder persons are not taken into account for the measuring life.

If the terms of the trust do not mandate payout of the annual required minimum distributions, the trust is an "accumulation" trust and must meet the requirements of a "see through" trust in order to receive a maximum stretch of benefits to be payable over the life of the oldest beneficiary, including remainder people. If the trust fails to qualify as a "see through" trust, the IRA must be withdrawn and taxed over a five year period.

In order for a trust to qualify as a "see through" trust, it must meet the requirements of a "designated beneficiary" under IRC §401(a)(9). To do so, the trust must meet the following requirements:

(1) The trust must be valid under state law (or would be valid under state law if it had a corpus)

(2) The trust must be irrevocable either by its terms of by reason of the death of the IRA owner

(3) The beneficiaries must be identifiable from the trust instrument

(4) A copy of the trust and a complete list of all beneficiaries (including contingent and remainder beneficiaries) must be provided to the plan administrator. See, IRC 1.401 (a) (9)-4.

If the trust qualifies as a "see-through" trust, the trust may take required minimum distributions over the life expectancy of the oldest beneficiary, if all of the beneficiaries are individuals. If any charities or other entities are beneficiaries, the trust must use the five year distribution rule, since unlike people, such entities do not have life expectancies.

3. Third Party Special Needs Trusts

If a parent or other individual wishes to name a special needs trust as the beneficiary of an IRA for an individual with a disability, the SNT must be carefully drafted to avoid negative tax treatment.

Under the "see through" trust rules, the trust would use the life expectancy of the oldest beneficiary. Therefore, it would be beneficial, if possible, to draft the trust so that the person with a disability is the oldest beneficiary. This may require skipping a generation so that the remainder beneficiaries are the nieces and nephews of the disabled beneficiary rather than the siblings.

If a charity or other entity is the remainder beneficiary, the trust will need to withdraw the funds within a five year period.

The issue of how an IRA placed into a grantor trust must be distributed is considered in PLR 200708084 which examines a situation where a beneficiary of an IRA was an irrevocable trust. The trust was held to meet the requirements of 401(a)(9)(A) as a "see-through" trust and distributions were to be made pursuant to the rules of IRC 401(a)(9)(B)(iii) and the regulations thereunder. The IRA was held to be distributed according to the life expectancy of the oldest beneficiary of the trust. A copy of the PLR is attached.

4. Self Settled Special Needs Trusts

    a. Inherited IRAs

Recent IRS Private Letter Rulings 200620025 provides guidance as to how self settled special needs trusts can be treated as owners of inherited individual retirement accounts. A Medicaid recipient was named as a beneficiary of an IRA. Following the death of the IRA owner, the beneficiary's legal guardian petitioned the court to create a trust under 42 USC 1396p(d)(4)(A). As required by that section of the United States Code, the trust provided for fully discretionary distributions of income and principal during the lifetime of the beneficiary. Any income not distributed was allowed to be accumulated and added to principal. At the death of the beneficiary, the trust was required to first repay the state for any benefits paid on behalf of the beneficiary. Any remaining trust assets were to be paid to the beneficiary's heirs at law as determined by the intestacy laws of the beneficiary's state of residency.

The guardian sought to transfer the beneficiary's share of the IRA to the self settled special needs trust. The IRS ruled that the trust qualified as a grantor trust under the rules of IRC 671 and 677(a). The Service relied on Revenue Ruling 85-13 for the proposition that if the trust is a grantor trust, the grantor is treated as the owner of all assets in the trust for federal tax purposes. Therefore, according to this PLR, the grantor is the owner of the IRA. The PLR did not address the issue of payouts and at what rate the IRA must be distributed. A copy of the PLR is attached.

b. Individual IRAs

By the same analysis, an individual with a disability theoretically should also be able to transfer his or her own IRA to a self-settled special needs trust. However, many brokerage firms and other IRA trustees are often reluctant to agree to retitling the IRA into the name of the trust, and case law is not clear on the treatment of this.

One of the authors, Jennifer L. VanderVeen, Esq., of Greenwood, Indiana, has requested a Private Letter Ruling regarding the titling of an IRA into a self-settled special needs trust. As of the date of the writing of this article in September 2009, the IRS has not yet responded to this request. A redacted copy of the PLR is attached.

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

200620025

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

FEB 2 1 2006

UICs: 691.00-00
691.01-00
401.06-00
401.06-02

SE:T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Bank N:

Court T:

State W:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Trust T:

IRA X:

IRA Y:

Dear :

This is in response to the request for letter ruling submitted by your authorized representative on your behalf, as supplemented by correspondence dated

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, , , , and , in which your authorized representative requests letter rulings under sections 401(a)(9) and 691(a)(2) of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request.

Taxpayer A died on Date 1, at age 69 prior to attaining his required beginning date as that term is defined in Code section 401(a)(9)(C). Taxpayer B is one of his four surviving sons. At his death, Taxpayer A owned an individual retirement account (IRA X) with Bank N of which his four sons were equal named beneficiaries pursuant to a beneficiary designation dated Date 2, . Taxpayer B is disabled, and his mother, Taxpayer C, is his legal guardian ("Guardian"). Taxpayer B is eligible to receive Medicaid and other public benefits, and it is represented that such eligibility could lapse if he directly owned a portion of IRA X.

The IRA X custodian set aside the shares of Taxpayer B's three brothers in separate sub-IRAs (separate accounts) for their benefit on or about Date 4, . The shares of Taxpayer B's three brothers were not distributed as part of said set aside. Taxpayer B's share has not been distributed from IRA X except for required minimum distribution(s) (RMD(s)) made to the Guardian since calendar year on his behalf. It has been represented that the subdivision of IRA X into three separate IRAs (shares) for Taxpayer B's three brothers (with Taxpayer B's share remaining in IRA X) was done on an equal, pro rata, basis.

A State W court, Court T, a court of competent jurisdiction, acting on a petition by the Guardian, issued an order dated Date 3, , authorizing the creation of a trust for the Taxpayer's benefit, intended to qualify as a "special needs trust" ("Trust T") under state and federal law. It is represented that if Trust T qualifies as a "special needs trust," the trust assets will not be considered as assets of Taxpayer B in determining his eligibility to receive public benefits.

The terms of Trust T provide that the Guardian is the trustee and Taxpayer B is the sole beneficiary of Trust T during his lifetime. The Guardian may distribute to or apply for the benefit of Taxpayer B so much of the net income and principal of Trust T as appears advisable in her sole discretion. The Guardian may accumulate any or all of Trust T income; income not distributed in the current year shall be added to principal. Upon Taxpayer B's death, the balance of Trust T shall be distributed to the State W Department of Children and Families to the extent necessary to satisfy the total medical assistance paid for Taxpayer B's benefit by that department during his life. The remaining balance shall be distributed to Taxpayer B's heirs at law under the State W law of intestacy (in a manner and proportion provided in Trust T). The Guardian has disclaimed her contingent remainder interest (as one of Taxpayer B's heirs at law) in Trust T by means of a disclaimer dated Date 5, . For purposes of this letter ruling, the Service will assume that said disclaimer falls within Code section 2518.

The Guardian proposes to transfer, with state court approval, Taxpayer B's share, as ¼ beneficiary thereof, of IRA X to an IRA benefiting Trust T and the beneficiary(ies) thereof. It has been represented that, pursuant to said transfer, IRA X shall be re-titled IRA Y.

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

1. That the transfer of IRA X (as described above) to Trust T will be disregarded for Federal income purposes, and will not be considered a transfer under Code section 691(a)(2); and

2. the trustee of Trust T, Guardian, may calculate the annual distributions required under Code section 401(a)(9) (made applicable to IRAs X and Y pursuant to Code section 408(a)(6)), to be made to Trust T from IRA Y using Taxpayer B's life expectancy.

With respect to your first letter ruling request, section 691(a)(1) of the Code provides that the amount of all items of gross income in respect of a decedent (IRD) which are not properly includible in respect of the taxable period in which falls the date of the decedent's death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received, of: (A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent; (B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or (C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

Section 691(a)(2) provides that if a right, described in § 691(a)(1), to receive an amount is transferred by the estate of the decedent or a person who received such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of such right at the time of such transfer plus the amount by which any consideration for the transfer exceeds such fair market value. For purposes of this paragraph, the term "transfer" includes sale, exchange, or other disposition, or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a transfer to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

Revenue Ruling 92-47, 1992-1 C.B. 198, holds that a distribution to the beneficiary of a decedent's IRA that equals the amount of the balance in the IRA at the decedent's death, less any nondeductible contributions, is IRD under Code section 691(a)(1) that is includable in the gross income of the beneficiary for the taxable year the distribution is received.

Section 671 provides that where it is specified in subpart E of Part I of subchapter J that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under chapter 1 in computing taxable income or credits against the tax of an individual.

Section 677(a) provides that the grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under Code section 674, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be (1) distributed to the grantor or the grantor's spouse; (2) held or accumulated for future distribution to the grantor or the grantor's spouse; or (3) applied to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse.

Rev. Rul. 85-13, 1985-1 C.B. 184, concludes that if a grantor is treated as the owner of a trust, the grantor is considered to be the owner of the trust assets for federal income tax purposes. Therefore, a transfer of the grantor's assets to the trust is not recognized as a sale or disposition for federal income tax purposes.

Based solely on the facts and representations submitted, we conclude, with respect to your first ruling request, that Trust T is currently a grantor trust all of which is treated as owned by Taxpayer B under §§ 671 and 677(a). Therefore, the transfer of Taxpayer B's share of IRA X to Trust T is not a sale or disposition of said share of the IRA for federal income tax purposes and is not a transfer for purposes of § 691(a)(2).

With respect to your second ruling request, 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 ruling request, "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. For determining required distributions for calendar year , taxpayers may rely on the 1987 proposed regulations, the 2001 proposed regulations, or the "Final" Regulations..

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 calendar year.

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 § 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 § 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)-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 in accordance with the "Final" regulations referenced above.

With respect to your second ruling request, based on the facts contained herein, the Service believes that the "separate account" requirements of section 1.401(a)(9)-8 of the "Final" regulations, Qs&As-2, have been met for years subsequent to calendar year . Additionally, based on the facts contained herein, the representation that Trust T is intended to qualify as a "special needs trust" under state and federal law to preserve Taxpayer B's eligibility to receive public benefits, and with reference to the conclusion reached on the first ruling regarding the status of Trust T as a grantor trust, the Service believes that it is appropriate to calculate the annual distributions required under Code section 401(a)(9) (made applicable to IRAs X and Y pursuant to Code section 408(a)(6), made to Trust T from IRA Y by using Taxpayer B's life expectancy.

Our conclusion to this second ruling request does not change even after Taxpayer B's share of Taxpayer A's IRA X is transferred, by means of a trustee to trustee transfer, to IRA Y, an IRA set up and maintained in the name of Taxpayer A to benefit Taxpayer B through Trust T.

Thus, with respect to your second ruling request, the Service concludes as follows:

> the trustee of Trust T, Guardian, may calculate the annual distributions required under Code section 401(a)(9) (made applicable to IRAs X and Y pursuant to Code section 408(a)(6)), to be made to Trust T from IRA Y by using Taxpayer B's life expectancy.

This ruling letter is based on the assumption that IRA X either has met, is meeting, or will meet the requirements of Code § 408(a) at all times relevant thereto. Furthermore, it assumes that IRA Y will also meet the requirements of Code section 408(a) at all times relevant thereto. It also assumes that Trust T is valid under the laws of State W as represented. Finally, it assumes that the disclaimer referenced herein met the requirements of Code section 2518.

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

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

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

If you wish to inquire about this ruling, please contact , Esquire (ID: -)) at either - (Phone) or - (FAX). Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

Frances V. Sloan

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

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

200708084

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NOV 27 2006

UICs: 401.06-01
401.06-02

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Taxpayer D:

Company A:

IRA X:

Trust T:

Trustee W:

State U:

Statute Sections:

Amount 1:

Amount 2:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

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This is in response to the , letter submitted on your behalf by your authorized representative(s), as supplemented by correspondence dated , and , , in which they, on your behalf, request a series of letter rulings under section 401(a)(9) of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 1, 1933, died on Date 2, 2003, a resident of State U, without having attained age 70 ½. Taxpayer A was survived by her son, Taxpayer B, whose date of birth was and a daughter, Taxpayer C, whose date of birth was Taxpayer A was also survived by a sister, Taxpayer D.

At her death, Taxpayer A maintained IRA X, an individual retirement account represented to be qualified within the meaning of Code section 408(a), with Company A. The value of IRA X as of the date of Taxpayer A's death was approximately Amount 1.

On or about Date 5, 1997, Taxpayer A named Trust T as the beneficiary of IRA X.

On or about Date 5, 1997, Taxpayer A executed Trust T. Trustee W is the current trustee of Trust T. It has been represented that at all times relevant to this request for letter ruling, Trust T was/is valid under the laws of State U. It has also been represented that, pursuant to Article IV, Section B, Trust T became irrevocable at the death of Taxpayer A. Finally, it has been represented that the documentation described in section 1.401(a)(9)-4, Question and Answer-6, of the "Final" Income Tax Regulations was provided to the administrator/custodian of IRA X prior to October 31, 2004.

Article VII of Trust T lists specific gifts of Trust T property to be distributed to specific beneficiaries after the death of Trustor (Taxpayer A). Article VIII, Section C, of Trust T provides, in summary, that, after satisfying the Trust's specific bequests, and after satisfying the requirements of Article VIII, Sections A and B, the remaining Trust T property is to be used to fund two sub-trusts to benefit Taxpayers B and C. Article VIII, Section C9 provides that the trust for each child (Taxpayer B and Taxpayer C) shall terminate when each child attains 45, at which time the trust property shall be distributed free of trust to said child. Taxpayer B and Taxpayer C had each attained age 45 prior to the death of Taxpayer A.

It has been represented that, in addition to IRA X, Trust T was the beneficiary of other property, totaling approximately Amount 2 in value, upon the death of Taxpayer A. It has also been represented that satisfaction of all of the bequests required under provisions of Trust T, including the funding of an annuity for the benefit of Taxpayer D, and satisfaction of all estate taxes associated with the estate of Taxpayer A were made by using assets other than IRA X. A representation has been made that use of non-IRA X

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assets was required under State U Statute Sections and relevant State U case law. Thus, as a result, to conform to the requirements of State U law, IRA X had to be used to fund the sub-trusts set up to benefit Taxpayers B and C under Article VIII, Section C, of Trust T.

It has been represented that distributions intended to satisfy the requirements of Code sections 401(a)(9) and 408(a)(6) have been made from IRA X since calendar year 2004 to Taxpayers A and B based on the life expectancy of Taxpayer B.

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

1. That Trust T, and the sub-trusts created under the provisions of Article VIII, Section C, are "see-through" trusts as that term is described in Section 1.401(a)(9)-4 of the "Final" Income Tax regulations, Question and Answer-5(b);

2. that Taxpayers B and C are the only individuals who have to be considered potential "designated beneficiaries", as that term is defined in Code section 401(a)(9)(E), for purposes of determining the payout period of distributions from IRA X;

3. that distributions from IRA X to Taxpayer B may be based on the life expectancy of Taxpayer B, the elder of Taxpayers B and C, using his attained age in calendar year 2004, the year after the year of death of Taxpayer A, and reduced by one during each subsequent calendar year.

With respect to your ruling requests, Code section 408(a) provides the rules governing IRAs. Code section 408(a)(6) provides that, under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit an IRA trust is maintained.

Code section 401(a)(9)(A) provides, in general, that a trust will not be considered qualified unless the plan provides that the entire interest of each employee --

> (i) will be distributed to such employee not later than the required beginning date, or
>
> (ii) will be distributed, beginning not later than the required beginning date, over the life of such employee or over the lives of such employee and a designated beneficiary or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary.

Section 401(a)(9)(C) of the Code provides, in relevant part, that, for purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the calendar year in which the IRA holder attains age 70 1/2.

Code section 401(a)(9)(B)(i) provides, in general, that if a plan participant (IRA holder) dies after the distribution of his interest has begun in accordance with subparagraph (A)(ii) (before his required beginning date), his plan or IRA interest remaining at his death must be distributed at least as rapidly as under the method of distribution being used under subparagraph (A)(ii) as of the date of his death.

Code section 401(a)(9)(B)(ii) provides, in general, that if a plan participant (IRA holder) dies before the distribution of his interest has begun in accordance with subparagraph (A)(ii) (prior to his required beginning date), then his entire interest must be distributed within 5 years of his death.

Code section 401(a)(9)(B)(iii) provides an exception to the 5-year rule (above). In general, pursuant to the exception, if any portion of the interest of a deceased plan participant (IRA holder) is payable to (or for the benefit of a designated beneficiary), such portion will be distributed beginning not later than 1 year after the date of the deceased's death (or a later date as prescribed by the Secretary under Regulations) in accordance with regulations over the life of the designated beneficiary (or a period not extending beyond the life expectancy of the beneficiary).

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

With respect to your ruling requests, "Final" Income Tax Regulations under Code sections 401(a)(9) and 408(a)(6) were published in the Federal Register at 67 Federal Register 18987-19028 (April 17, 2002), and in the Internal Revenue Bulletin at 2002-19 I.R.B. 852 (May 13, 2002). The Preamble to the "Final" Regulations, in relevant part, provide that the regulations apply for determining required minimum distributions for calendar years beginning after January 1, 2003[.]

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-1, provides, in relevant part, that a designated beneficiary is an individual who is designated as a beneficiary under a plan either by the terms of the plan or by an affirmative election by the employee. A beneficiary designated under the plan is an individual who is entitled to a portion of an employee's benefit contingent on the employee's death or another specified event. A designated beneficiary need not be specified by name in the plan or by the employee to the plan in order to be a designated beneficiary so long as the individual who is to be the beneficiary is identifiable under the plan. Q&A-1 further provides that a person who takes under a will or otherwise under applicable state law will not be a designated beneficiary unless that individual also takes under a plan.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-4, provides, in relevant part, that in order to be a designated beneficiary, an individual must be a beneficiary as of the date of (the employee's or IRA holder's) death. Generally, an employee's designated beneficiary will be determined based on the beneficiaries designated as of the date of death who remain beneficiaries as of September 30 of the calendar year following the calendar year of death. Consequently, any person who was a beneficiary as of the date of the employee's date, but is not a beneficiary as of that September 30 (e.g. because the person receives the entire benefit to which the person is entitled before that September 30) is not taken into account in determining the employee's designated beneficiary for purposes of determining the distribution period for required minimum distributions after the employee's death.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-3, provides that only individuals may be designated beneficiaries for purposes of section 401(a)(9). A person who is not an individual, such as the employee's estate, may not be a designated beneficiary. However, Q&A-5 of section 1.401(a)(9)-4 provides that beneficiaries of a trust with respect to the trust's interest in an employee's benefit may be treated as designated beneficiaries if the following requirements are met:

(1) the trust is valid under state law or would be but for the fact there is no corpus.

(2) the trust is irrevocable or will, by its terms, become irrevocable upon the death of the employee.

(3) the beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's benefit are identifiable within the meaning of A-1 of this section from the trust instrument.

(4) relevant documentation has been timely provided to the plan administrator.

Section 1.401(a)(9)-4 of the "Final" Regulations, Q&A-6(b), provides in relevant summary, that, at a minimum, documentation sufficient to enable an IRA custodian to identify beneficiaries of an IRA must be provided by a trustee to the custodian by October 31 of the calendar year immediately following the calendar year in which the IRA owner died.

Section 1.401(a)(9)-3 of the "Final" regulations, Q&A-3(a) provides, in general, that, with respect to the life expectancy exception to the 5-year rule described in Code section 401(a)(9)(B)(iii), and in A-1, distributions are required to begin to a non-spouse beneficiary on or before the end of the calendar year immediately following the calendar year in which the employee died. This rule also applies if another individual is a designated beneficiary in addition to the employee's (IRA holder's) surviving spouse.

Section 1.401(a)(9)-3 of the "Final" regulations, Q&A-4(a), provides, in relevant part, that in the absence of a plan provision to the contrary, with respect to an individual who dies prior to reaching his required beginning date, if said individual has designated a beneficiary, distributions from his plan or IRA are to be made in accordance with the life expectancy rule of Code sections 401(a)(9)(B)(iii) and (iv).

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-5(b), provides, in general, that if an employee dies before his required beginning date, in order to satisfy the requirements of Code section 401(a)(9)(B)(iii) or (iv) and the life expectancy rule described in A-1 of section 1.401(a)(9)-3, the applicable distribution period for distribution calendar years after the distribution calendar year containing the employee's date of death is determined in accordance with paragraph (c) of this A-5.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-5(c)(1), provides, in general, that, with respect to a non-spouse beneficiary, the applicable distribution period measured by the beneficiary's remaining life expectancy is determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the employee's death. In subsequent calendar years, the applicable distribution period is reduced by one for each calendar year that has elapsed after the calendar year immediately following the calendar year of the employee's death.

Section 1.401(a)(9)-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)-8 of the "Final" regulations, Q&A- 2(a), provides the "separate account" rules with respect to defined contribution plans.

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

Section 1.401(a)(9)-9 of the "Final" Regulations, Q&A-1, sets forth the "Single Life Table" to be used to determine the life expectancy of an individual. The "Single Life Table" indicates that the life expectancy of a 47-year old is 37.0 years.

With specific reference to your first ruling request, it has been represented that Trust T is valid under the laws of State U and became irrevocable at the death of Taxpayer A. Furthermore, it has been represented that a copy of the documentation required under the "Final" Regulations promulgated under Code section 401(a)(9) was timely given to the administrator(s) of IRA X. Finally, the identities of the beneficiaries of Trust T, each of whom is a human being, may be determined by perusing its terms.

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

1. That Trust T is a qualified "See-Through Trust" within the meaning of section 1.401(a)(9)-4 of the "Final" Income Tax Regulations, Question and Answer-5.

With respect to your second and third ruling requests, since Trust T, and its sub-trusts, constitute valid "See-Through Trusts", it is necessary to determine who, if anyone, is the designated beneficiary, within the meaning of Code sections 401(a)(9) and 408(a)(6), of Taxpayer A's IRA X. In this regard, we note that IRA X was allocated to the subtrusts created under the terms of Article VIII, Section C, of Trust T to conform to the requirements of State U law. Thus, in accordance with State U law, Trustee W, Trust T's trustee, did not have the discretion to allocate IRA X in such a way that it could be used to satisfy any other bequest of Trust T. In short, it has been represented, and documentation attached to this ruling request support the representation, that the allocation of IRA X to the subtrusts, referenced above, was mandatory and not discretionary.

As noted above, Taxpayers B and C are the only beneficiaries of the two subtrusts referenced above. Also, as noted above, since both Taxpayer B and Taxpayer C had attained age 45 prior to the death of Taxpayer A, distributions from the property used to fund said subtrusts, including IRA X, are to be made directly to Taxpayers B and C, without limitation, and free of trust. This precludes the accumulation of any portion of said distributed amounts for the benefit of other subtrust beneficiaries after the end of the year with respect to which said distribution was made. As a result, Taxpayers B and C, are the only beneficiaries who will receive the distributed amounts and the only beneficiaries who must be considered for purposes of determining who is the designated beneficiary, within the meaning of Code section 401(a)(9)(E), of IRA X. As noted previously, Taxpayer B is older than Taxpayer C. Furthermore, as noted above, Taxpayer B was 47 years of age in calendar year 2004.

Thus, with respect to your second and third ruling requests, we conclude as follows:

2. that Taxpayers B and C are the only individuals who have to be considered potential "designated beneficiaries", as that term is defined in Code section 401(a)(9)(E), for purposes of determining the payout period of distributions from IRA X; .

3. that distributions from IRA X to Taxpayer B may be based on the life expectancy of Taxpayer B, the elder of Taxpayers B and C, using his attained age in calendar year 2004, the year after the year of death of Taxpayer A, and reduced by one during each subsequent calendar year.

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This ruling letter assumes that IRA X either was, is, or will be, as represented, qualified within the meaning of Code section Code section 408(a), at all times relevant thereto. It also assumes that Trust T is valid under the laws of State U as represented. Additionally, it assumes the correctness of all facts and representations contained therein.

This letter is directed only to the taxpayer that requested it and is based solely on the representations made with respect thereto. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

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

Any questions regarding this letter ruling should be addressed to , Esquire (ID: -) at 202- - (phone-not a toll-free number) or 202- (FAX).

Sincerely yours,

Frances V. Sloan

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

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

July 1, 2009

Internal Revenuė Service
Associate Chief Counsel
Passthroughs and Special Industries
Attn: CC:PA:LPD:DRU
P.O. Box 7604
Ben Franklin Station
Washington DC 20044

Dear Sir or Madam:

[redacted] and [redacted] as Trustee of the [redacted] Supplemental Care Trust jointly request a ruling on the proper treatment of [redacted] individual retirement account and its ownership by the [redacted] Supplemental Care Trust under section 671 and 677(a) of the Internal Revenue Code.

The taxpayer is requesting a reduced user fee and a statement supporting that request is attached hereto as Exhibit "A."

A. Statement of Facts

1. Taxpayer Information

[redacted] individual
[redacted]

[redacted] Supplemental Care Trust, [redacted] Trustee
[redacted]

2. Facts Relating to the Transaction

[redacted] is an individual who was declared disabled by the Social Security Administration in May, 1990. [redacted] is [redacted] and attorney in fact, pursuant to a General Durable Power of Attorney executed by [redacted] on [redacted]

On July 31, 2007, Superior Court No. 1 of Johnson County, Indiana issued an order creating the [redacted] Supplemental Care Trust (the "Trust") and ordering the transfer of all of [redacted] assets and specifically his individual retirement account into the trust. A copy of the Petition to establish the Trust is attached hereto as Exhibit "B," a copy of the Order establishing the Trust is attached hereto as Exhibit "C," and a copy of the Trust itself is attached hereto as Exhibit "D."

[redacted] is the grantor of the Trust. [redacted] is the Trustee of the Trust. The Trust is intended to qualify as a special needs trust pursuant to 42 USC 1396p(d)(4)(A) and provides that [redacted] is the sole beneficiary during [redacted] lifetime and the trustee has complete discretion over distributions of income and principal. The Trustee may accumulate any or all of the Trust income. Any income not distributed in the year received shall be added to trust principal.

All assets in the Trust were contributed by [redacted] [redacted] retains the power to reacquire the Trust corpus by substituting other property of equal value during administration of the Trust. Upon [redacted] death, the balance remaining in the Trust is to be distributed first to the State of Indiana to the extent that the State of Indiana, through the Department of Family and Social Services, has expended funds for [redacted] medical care through the assistance of the Medicaid program. Any funds remaining in the Trust after the repayment to the State of Indiana are to be paid to [redacted] probate estate.

At the time of the court order in 2007, [redacted] primary asset was an individual retirement account at [redacted] All funds in the individual retirement account were contributed by [redacted]

On September 18, 2007, [redacted] and [redacted] signed paperwork with [redacted] to retitle IRA account # [redacted] into the name of the [redacted] Supplemental Care Trust. No distribution was requested and, since no distribution was contemplated, no withholding was requested. A copy of the request is attached hereto as Exhibit "E." [redacted] has advised counsel for [redacted] that it rejected this request on September 24, 2007.

On March 4, 2008, [redacted] financial advisor faxed the same paperwork as Exhibit "E" above to [redacted] with a letter asking that the assets held in the IRA be transferred to the Trust immediately. A copy of that fax is attached hereto as Exhibit "F."

On March 6, 2008, [redacted] distributed the individual retirement account into a new account in the name of the [redacted] Supplemental Care Trust, asserting that an IRA could not be held in the name of a Trust. In January 2009, [redacted] received a Form 1099 reflecting the IRA distribution. A copy of the Form 1099 is attached hereto as Exhibit "G."

After much discussion, [redacted] confirmed the transactions detailed above to [redacted] counsel. [redacted] has informed counsel that the above transactions can be rectified, however, [redacted] will only undertake the necessary transactions upon receipt of a ruling from the Internal Revenue Service as to the ability of a trust such as the [redacted] Supplemental Care Trust to hold an individual retirement account. A copy of the e-mail requesting the ruling is attached hereto as Exhibit "H."

B. Ruling Requested

[redacted] and [redacted] as Trustee of the [redacted] Supplemental Care Trust (the "Taxpayers") jointly request a ruling that:

1. The [redacted] Supplemental Care Trust can hold an individual retirement account as one of the assets of the trust; and
2. The transfer of an individual retirement account from [redacted] individually, to the [redacted] Supplemental Care Trust should have been treated as a trustee to trustee transfer and not a taxable distribution.

C. Statement of Law

The Taxpayers believe that the following sections of the Internal Revenue Code are applicable:

IRC §671 which states:

> Where it is specified in this subpart (Subtitle A, Chapter 1, Subchapter J, Part I, Subpart E) that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor or the other person those items of income, deduction, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under this chapter in computing taxable income or credits against the tax of an individual. Any remaining portion of the trust shall be subject to subparts A through D. No items of a trust shall be included in computing the taxable income and credits of the grantor or of any other person solely on the grounds of his dominion and control over the trust under section 61 (relating to the definition of gross income) or any other providion of this title, except as specified in this subpart.

IRC §675 which states:

> The grantor shall be treated as the owner of any portion of a trust in respect of which:
>
> (1) A power exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party enables the grantor or any person to purchase, exchange, or otherwise deal with or dispose of the corpus or the income therefrom for less than an adequate consideration in money or money's worth.
>
> (2) A power exercisable by the grantor or a nonadverse party, or both, enables the grantor to borrow the corpus or income, directly or indirectly, without adequate interest or without adequate security except where a trustee (other than the grantor) is authorized under a general lending power to make loans to any person without regard to interest or security.
>
> (3) The grantor has directly or indirectly borrowed the corpus or income and has not completely repaid the loan, including any interest, before the beginning of the taxable year. The preceding sentence shall not apply to a loan which provides for adequate interest and adequate security, if such loan is made by a trustee other than the grantor and other than a related

or subordinate trustee subservient to the grantor. For periods during which an individual is the spouse of the grantor (within the meaning of section 672(e)(2)), any reference in this paragraph to the grantor shall be treated as including a reference to such individual.

(4) A power of administration is exercisable in a nonfiduciary capacity by any person without the approval or consent of any person in a fiduciary capacity. For purposes of this paragraph, the term "power of administration" means any one or more of the following powers: (A) a power to vote or direct the voting of stock or other securities of a corporation in which the holdings of the grantor and the trust are significant from the viewpoint of voting control; (B) a power to control the investment of the trust funds either by directing investments or reinvestments, to the extent that the trust funds consist of stocks or securities of corporations in which the holdings of the grantor and the trust are significant from the viewpoint of voting control; or (C) a power to reacquire the trust corpus by substituting other property of an equivalent value.

IRC §677(a) which states:

The grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owners under Section 674, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be

(1) Distributed to the grantor or the grantor's spouse;
(2) Held or accumulated for future distributions to the grantor or the grantor's spouse; or
(3) Applied to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse (except policies of insurance irrevocably payable for a purpose specified in section 170(c) (relating to definition of charitable contributions)).

This subsection shall not apply to a power the exercise of which can only affect the beneficial enjoyment of the income for a period commencing after the occurrence of an event such that the grantor would not be treated as the owner under section 673 if the power were a reversionary interest; but the grantor may be treated as the owner after the occurrence of the event unless the power is relinquished.

Revenue Ruling 85-13 which states in its holdings that:

(1) A's receipt of the entire corpus of the trust in exchange for A's unsecured promissory note constituted an indirect borrowing of the trust corpus which caused A to be the owner of the entire trust under section 675(3) of Code.

(2) At the time A became the owner of the trust, A became the owner of the trust property. As a result, the transfer of trust assets to A was not a sale for federal income tax purposes and A did not acquire a cost basis in those assets Accordingly, when A sole the shares of Corporation Z stock on January 20, 1984, A recognized gain of \$30x (amount realized of \$50x less adjusted basis of \$20x). Further, this holding would apply even if the trust held other assets in addition to A's promissory note if A, under any of the grantor trust provisions, was treated as the owner of the portion of the trust represented by the promissory note because A would be treated as the owner of the purported consideration (the promissory note) both before and after the transaction.

D. Analysis

The [redacted] Supplemental Care Trust (the "Trust" was created by the Johnson County Superior Court pursuant to the requirements of 42 USC1396p(d)(4)(A). [redacted] is the grantor of the trust and all assets in the trust were contributed by [redacted]

The Trust provides that [redacted] has the authority to reacquire the Trust corpus by substituting other property of equal value during administration of the Trust. (See Section 3.2.2 of the Trust, which is attached hereto as Exhibit "D"). Pursuant to IRC §§675(4)(C), this authority results in [redacted] as grantor being treated as the owner of the assets of the trust.

The Trust also provides that [redacted], as Trustee of the Trust has the sole discretion to distribute income to [redacted] or accumulate said income and add it to the principal of the Trust. [redacted] is [redacted] and attorney-in-fact. As such, [redacted] is a nonadverse party and, under IRC §677, if a nonadverse party has the discretion to distribute income to the grantor, the grantor is treated as the owner of those assets. Therefore, [redacted] is treated as the owner of the assets of the Trust.

In Revenue Ruling 85-13, the Service held that, where the grantor of a trust was treated as the owner of the assets of the trust, transfers of assets to and from the trust by the grantor were not considered taxable dispositions of the assets because the grantor was the owner of the asset both before and after the transfer.

Once the individual retirement account owned by [redacted] is transferred to the Trust, [redacted] will, for tax purposes under IRC §675(4)(C) and §677, be treated as the owner of the individual retirement account. Therefore, the transfer of the individual retirement account to the Trust is a transfer pursuant to IRC §402(c) and not a taxable distribution. Because [redacted] remains the owner of the individual retirement account following its transfer into the Trust, the individual retirement account may remain in its tax deferred form regardless of being titled into the Trust.

E. Conclusion

Pursuant to Internal Revenue Code sections 671, 675 and 677(a) and the holdings of Revenue Ruling 85-13, the [redacted] Supplemental Care Trust is a grantor trust all assets of which are treated as owned by [redacted]. Therefore, the transfer of an individual retirement account owned by [redacted] to the Trust owned by [redacted] is a transfer pursuant to Internal Revenue Code section 402(c).

F. Procedural Matters

1. Revenue Procedure 2009-1 Statements
   - *i.* As required by section 7.01(4), no return of the Taxpayers, or any return of a related taxpayer within the meaning of §267, or any return of a member of an affiliated group of which the Taxpayers are also a member within the meaning of §1504 that would be affected by the requested letter ruling is under examination, before Appeals, or before a Federal court.
   - *ii.* As required by section 7.01(5)(a), the Service has not previously ruled on the same or similar issue for the Taxpayers, a related taxpayer, or a predecessor.
   - *iii.* As required by section 7.01(5)(b), the Taxpayers, any related Taxpayers, a predecessor or any representatives have not previously submitted any request involving the same or a similar issue which was withdrawn before a ruling was issued.
   - *iv.* As required by section 7.01(5)(c), the Taxpayers, any related Taxpayers, or any predecessors have not previously submitted any request involving the same or a similar issue which is currently pending with the Service.
   - *v.* The letter ruling does not involve the interpretation of any income or estate tax treaty.
   - *vi.* As required by section 7.01(8), the law in connection with the ruling request is not uncertain and the issue is adequately addressed by relevant authorities.
   - *vii.* As required by section 7.01(9), the Taxpayers have determined that there are no contrary authorities.
   - viii. Pursuant to section 7.02(6), the Taxpayers request a conference on the issues only if the Associate Counsel's office feels that such a request would be helpful or if an adverse decision is indicated.
   - ix. Pursuant to section 7.02(5), the Taxpayers request that any documents relating to the letter request be faxed to their representative, [redacted] at [redacted]
   - x. The Taxpayers are not requesting separate letter rulings on multiple issues.
   - xi. The Taxpayers are not seeking a user fee under paragraph (A)(5)(a) of Appendix A for substantially identical letter rulings.
2. Administrative
   - i. The deletion statement and checklist required by Rev. Proc. 2009-1 are enclosed.
   - ii. The required user fee of $625.00 is enclosed.
   - iii. A Power of Attorney is enclosed.

Sincerely yours,

[redacted], by [redacted] Authorized Representative

____
[redacted]
Date:______________________

[redacted] as Trustee of the [redacted] Supplemental Care Trust by [redacted] Authorized Representative

____
[redacted]
Date:______________________

Declaration:

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts are true, correct and complete.

____
[redacted], as Trustee of the [redacted] Supplemental Care Trust

____
[redacted]

Certification in support of reduced user fee

In support of their request for a reduced user fee, the Taxpayers ([redacted] and [redacted], as Trustee of the [redacted]) state that:

1. [redacted] gross income, as defined under paragraphs (B)(2) and (B)(4) of Appendix A to Revenue Procedure 2009-1, is less than $250,000 as reported on [redacted] last federal income tax return filed for a full taxable year ending before the date of this request.
2. The gross income of the [redacted] Supplemental Care Trust, as defined under paragraphs (B)(2) and (B)(4) of Appendix A to Revenue Procedure 2009-1, is less than $250,000 as reported on his last federal income tax return filed for a full taxable year ending before the date of this request.

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

200620025

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

FEB 2 1 2006

UICs: 691.00-00
691.01-00
401.06-00
401.06-02

SE:T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Bank N:

Court T:

State W:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Trust T:

IRA X:

IRA Y:

Dear :

This is in response to the request for letter ruling submitted by your authorized representative on your behalf, as supplemented by correspondence dated

, , , , and , in which your authorized representative requests letter rulings under sections 401(a)(9) and 691(a)(2) of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request.

Taxpayer A died on Date 1, at age 69 prior to attaining his required beginning date as that term is defined in Code section 401(a)(9)(C). Taxpayer B is one of his four surviving sons. At his death, Taxpayer A owned an individual retirement account (IRA X) with Bank N of which his four sons were equal named beneficiaries pursuant to a beneficiary designation dated Date 2, . Taxpayer B is disabled, and his mother, Taxpayer C, is his legal guardian ("Guardian"). Taxpayer B is eligible to receive Medicaid and other public benefits, and it is represented that such eligibility could lapse if he directly owned a portion of IRA X.

The IRA X custodian set aside the shares of Taxpayer B's three brothers in separate sub-IRAs (separate accounts) for their benefit on or about Date 4, . The shares of Taxpayer B's three brothers were not distributed as part of said set aside. Taxpayer B's share has not been distributed from IRA X except for required minimum distribution(s) (RMD(s)) made to the Guardian since calendar year on his behalf. It has been represented that the subdivision of IRA X into three separate IRAs (shares) for Taxpayer B's three brothers (with Taxpayer B's share remaining in IRA X) was done on an equal, pro rata, basis.

A State W court, Court T, a court of competent jurisdiction, acting on a petition by the Guardian, issued an order dated Date 3, , authorizing the creation of a trust for the Taxpayer's benefit, intended to qualify as a "special needs trust" ("Trust T") under state and federal law. It is represented that if Trust T qualifies as a "special needs trust," the trust assets will not be considered as assets of Taxpayer B in determining his eligibility to receive public benefits.

The terms of Trust T provide that the Guardian is the trustee and Taxpayer B is the sole beneficiary of Trust T during his lifetime. The Guardian may distribute to or apply for the benefit of Taxpayer B so much of the net income and principal of Trust T as appears advisable in her sole discretion. The Guardian may accumulate any or all of Trust T income; income not distributed in the current year shall be added to principal. Upon Taxpayer B's death, the balance of Trust T shall be distributed to the State W Department of Children and Families to the extent necessary to satisfy the total medical assistance paid for Taxpayer B's benefit by that department during his life. The remaining balance shall be distributed to Taxpayer B's heirs at law under the State W law of intestacy (in a manner and proportion provided in Trust T). The Guardian has disclaimed her contingent remainder interest (as one of Taxpayer B's heirs at law) in Trust T by means of a disclaimer dated Date 5, . For purposes of this letter ruling, the Service will assume that said disclaimer falls within Code section 2518.

The Guardian proposes to transfer, with state court approval, Taxpayer B's share, as ¼ beneficiary thereof, of IRA X to an IRA benefiting Trust T and the beneficiary(ies) thereof. It has been represented that, pursuant to said transfer, IRA X shall be re-titled IRA Y.

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

1. That the transfer of IRA X (as described above) to Trust T will be disregarded for Federal income purposes, and will not be considered a transfer under Code section 691(a)(2); and

2. the trustee of Trust T, Guardian, may calculate the annual distributions required under Code section 401(a)(9) (made applicable to IRAs X and Y pursuant to Code section 408(a)(6)), to be made to Trust T from IRA Y using Taxpayer B's life expectancy.

With respect to your first letter ruling request, section 691(a)(1) of the Code provides that the amount of all items of gross income in respect of a decedent (IRD) which are not properly includible in respect of the taxable period in which falls the date of the decedent's death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received, of: (A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent; (B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or (C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

Section 691(a)(2) provides that if a right, described in § 691(a)(1), to receive an amount is transferred by the estate of the decedent or a person who received such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of such right at the time of such transfer plus the amount by which any consideration for the transfer exceeds such fair market value. For purposes of this paragraph, the term "transfer" includes sale, exchange, or other disposition, or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a transfer to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

Revenue Ruling 92-47, 1992-1 C.B. 198, holds that a distribution to the beneficiary of a decedent's IRA that equals the amount of the balance in the IRA at the decedent's death, less any nondeductible contributions, is IRD under Code section 691(a)(1) that is includable in the gross income of the beneficiary for the taxable year the distribution is received.

Section 671 provides that where it is specified in subpart E of Part I of subchapter J that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under chapter 1 in computing taxable income or credits against the tax of an individual.

Section 677(a) provides that the grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under Code section 674, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be (1) distributed to the grantor or the grantor's spouse; (2) held or accumulated for future distribution to the grantor or the grantor's spouse; or (3) applied to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse.

Rev. Rul. 85-13, 1985-1 C.B. 184, concludes that if a grantor is treated as the owner of a trust, the grantor is considered to be the owner of the trust assets for federal income tax purposes. Therefore, a transfer of the grantor's assets to the trust is not recognized as a sale or disposition for federal income tax purposes.

Based solely on the facts and representations submitted, we conclude, with respect to your first ruling request, that Trust T is currently a grantor trust all of which is treated as owned by Taxpayer B under §§ 671 and 677(a). Therefore, the transfer of Taxpayer B's share of IRA X to Trust T is not a sale or disposition of said share of the IRA for federal income tax purposes and is not a transfer for purposes of § 691(a)(2).

With respect to your second ruling request, 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 ruling request, "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. For determining required distributions for calendar year , taxpayers may rely on the 1987 proposed regulations, the 2001 proposed regulations, or the "Final" Regulations..

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 calendar year.

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 § 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 § 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)-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 in accordance with the "Final" regulations referenced above.

With respect to your second ruling request, based on the facts contained herein, the Service believes that the "separate account" requirements of section 1.401(a)(9)-8 of the "Final" regulations, Qs&As-2, have been met for years subsequent to calendar year . Additionally, based on the facts contained herein, the representation that Trust T is intended to qualify as a "special needs trust" under state and federal law to preserve Taxpayer B's eligibility to receive public benefits, and with reference to the conclusion reached on the first ruling regarding the status of Trust T as a grantor trust, the Service believes that it is appropriate to calculate the annual distributions required under Code section 401(a)(9) (made applicable to IRAs X and Y pursuant to Code section 408(a)(6), made to Trust T from IRA Y by using Taxpayer B's life expectancy.

Our conclusion to this second ruling request does not change even after Taxpayer B's share of Taxpayer A's IRA X is transferred, by means of a trustee to trustee transfer, to IRA Y, an IRA set up and maintained in the name of Taxpayer A to benefit Taxpayer B through Trust T.

Thus, with respect to your second ruling request, the Service concludes as follows:

> the trustee of Trust T, Guardian, may calculate the annual distributions required under Code section 401(a)(9) (made applicable to IRAs X and Y pursuant to Code section 408(a)(6)), to be made to Trust T from IRA Y by using Taxpayer B's life expectancy.

This ruling letter is based on the assumption that IRA X either has met, is meeting, or will meet the requirements of Code § 408(a) at all times relevant thereto. Furthermore, it assumes that IRA Y will also meet the requirements of Code section 408(a) at all times relevant thereto. It also assumes that Trust T is valid under the laws of State W as represented. Finally, it assumes that the disclaimer referenced herein met the requirements of Code section 2518.

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

200620025

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

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

If you wish to inquire about this ruling, please contact , Esquire (ID: -)) at either - (Phone) or - (FAX). Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

Frances V. Sloan

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

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

200708084

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NOV 27 2006

UICs: 401.06-01
401.06-02

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Taxpayer D:

Company A:

IRA X:

Trust T:

Trustee W:

State U:

Statute Sections:

Amount 1:

Amount 2:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

25

This is in response to the , letter submitted on your behalf by your authorized representative(s), as supplemented by correspondence dated , and , , in which they, on your behalf, request a series of letter rulings under section 401(a)(9) of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 1, 1933, died on Date 2, 2003, a resident of State U, without having attained age 70 ½. Taxpayer A was survived by her son, Taxpayer B, whose date of birth was and a daughter, Taxpayer C, whose date of birth was Taxpayer A was also survived by a sister, Taxpayer D.

At her death, Taxpayer A maintained IRA X, an individual retirement account represented to be qualified within the meaning of Code section 408(a), with Company A. The value of IRA X as of the date of Taxpayer A's death was approximately Amount 1.

On or about Date 5, 1997, Taxpayer A named Trust T as the beneficiary of IRA X.

On or about Date 5, 1997, Taxpayer A executed Trust T. Trustee W is the current trustee of Trust T. It has been represented that at all times relevant to this request for letter ruling, Trust T was/is valid under the laws of State U. It has also been represented that, pursuant to Article IV, Section B, Trust T became irrevocable at the death of Taxpayer A. Finally, it has been represented that the documentation described in section 1.401(a)(9)-4, Question and Answer-6, of the "Final" Income Tax Regulations was provided to the administrator/custodian of IRA X prior to October 31, 2004.

Article VII of Trust T lists specific gifts of Trust T property to be distributed to specific beneficiaries after the death of Trustor (Taxpayer A). Article VIII, Section C, of Trust T provides, in summary, that, after satisfying the Trust's specific bequests, and after satisfying the requirements of Article VIII, Sections A and B, the remaining Trust T property is to be used to fund two sub-trusts to benefit Taxpayers B and C. Article VIII, Section C9 provides that the trust for each child (Taxpayer B and Taxpayer C) shall terminate when each child attains 45, at which time the trust property shall be distributed free of trust to said child. Taxpayer B and Taxpayer C had each attained age 45 prior to the death of Taxpayer A.

It has been represented that, in addition to IRA X, Trust T was the beneficiary of other property, totaling approximately Amount 2 in value, upon the death of Taxpayer A. It has also been represented that satisfaction of all of the bequests required under provisions of Trust T, including the funding of an annuity for the benefit of Taxpayer D, and satisfaction of all estate taxes associated with the estate of Taxpayer A were made by using assets other than IRA X. A representation has been made that use of non-IRA X assets was required under State U Statute Sections and relevant State U case law. Thus, as a result, to conform to the requirements of State U law, IRA X had to be used to fund the sub-trusts set up to benefit Taxpayers B and C under Article VIII, Section C, of Trust T.

It has been represented that distributions intended to satisfy the requirements of Code sections 401(a)(9) and 408(a)(6) have been made from IRA X since calendar year 2004 to Taxpayers A and B based on the life expectancy of Taxpayer B.

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

1. That Trust T, and the sub-trusts created under the provisions of Article VIII, Section C, are "see-through" trusts as that term is described in Section 1.401(a)(9)-4 of the "Final" Income Tax regulations, Question and Answer-5(b);

2. that Taxpayers B and C are the only individuals who have to be considered potential "designated beneficiaries", as that term is defined in Code section 401(a)(9)(E), for purposes of determining the payout period of distributions from IRA X;

3. that distributions from IRA X to Taxpayer B may be based on the life expectancy of Taxpayer B, the elder of Taxpayers B and C, using his attained age in calendar year 2004, the year after the year of death of Taxpayer A, and reduced by one during each subsequent calendar year.

With respect to your ruling requests, Code section 408(a) provides the rules governing IRAs. Code section 408(a)(6) provides that, under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit an IRA trust is maintained.

Code section 401(a)(9)(A) provides, in general, that a trust will not be considered qualified unless the plan provides that the entire interest of each employee --

> (i) will be distributed to such employee not later than the required beginning date, or
>
> (ii) will be distributed, beginning not later than the required beginning date, over the life of such employee or over the lives of such employee and a designated beneficiary or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary.

Section 401(a)(9)(C) of the Code provides, in relevant part, that, for purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the calendar year in which the IRA holder attains age 70 1/2.

Code section 401(a)(9)(B)(i) provides, in general, that if a plan participant (IRA holder) dies after the distribution of his interest has begun in accordance with subparagraph (A)(ii) (before his required beginning date), his plan or IRA interest remaining at his death must be distributed at least as rapidly as under the method of distribution being used under subparagraph (A)(ii) as of the date of his death.

Code section 401(a)(9)(B)(ii) provides, in general, that if a plan participant (IRA holder) dies before the distribution of his interest has begun in accordance with subparagraph (A)(ii) (prior to his required beginning date), then his entire interest must be distributed within 5 years of his death.

Code section 401(a)(9)(B)(iii) provides an exception to the 5-year rule (above). In general, pursuant to the exception, if any portion of the interest of a deceased plan participant (IRA holder) is payable to (or for the benefit of a designated beneficiary), such portion will be distributed beginning not later than 1 year after the date of the deceased's death (or a later date as prescribed by the Secretary under Regulations) in accordance with regulations over the life of the designated beneficiary (or a period not extending beyond the life expectancy of the beneficiary).

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

With respect to your ruling requests, "Final" Income Tax Regulations under Code sections 401(a)(9) and 408(a)(6) were published in the Federal Register at 67 Federal Register 18987-19028 (April 17, 2002), and in the Internal Revenue Bulletin at 2002-19 I.R.B. 852 (May 13, 2002). The Preamble to the "Final" Regulations, in relevant part, provide that the regulations apply for determining required minimum distributions for calendar years beginning after January 1, 2003[.]

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-1, provides, in relevant part, that a designated beneficiary is an individual who is designated as a beneficiary under a plan either by the terms of the plan or by an affirmative election by the employee. A beneficiary designated under the plan is an individual who is entitled to a portion of an employee's benefit contingent on the employee's death or another specified event. A designated beneficiary need not be specified by name in the plan or by the employee to the plan in order to be a designated beneficiary so long as the individual who is to be the beneficiary is identifiable under the plan. Q&A-1 further provides that a person who takes under a will or otherwise under applicable state law will not be a designated beneficiary unless that individual also takes under a plan.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-4, provides, in relevant part, that in order to be a designated beneficiary, an individual must be a beneficiary as of the date of (the employee's or IRA holder's) death. Generally, an employee's designated beneficiary will be determined based on the beneficiaries designated as of the date of death who remain beneficiaries as of September 30 of the calendar year following the calendar year of death. Consequently, any person who was a beneficiary as of the date of the employee's date, but is not a beneficiary as of that September 30 (e.g. because the person receives the entire benefit to which the person is entitled before that September 30) is not taken into account in determining the employee's designated beneficiary for purposes of determining the distribution period for required minimum distributions after the employee's death.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-3, provides that only individuals may be designated beneficiaries for purposes of section 401(a)(9). A person who is not an individual, such as the employee's estate, may not be a designated beneficiary. However, Q&A-5 of section 1.401(a)(9)-4 provides that beneficiaries of a trust with respect to the trust's interest in an employee's benefit may be treated as designated beneficiaries if the following requirements are met:

(1) the trust is valid under state law or would be but for the fact there is no corpus.

(2) the trust is irrevocable or will, by its terms, become irrevocable upon the death of the employee.

(3) the beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's benefit are identifiable within the meaning of A-1 of this section from the trust instrument.

(4) relevant documentation has been timely provided to the plan administrator.

Section 1.401(a)(9)-4 of the "Final" Regulations, Q&A-6(b), provides in relevant summary, that, at a minimum, documentation sufficient to enable an IRA custodian to identify beneficiaries of an IRA must be provided by a trustee to the custodian by October 31 of the calendar year immediately following the calendar year in which the IRA owner died.

Section 1.401(a)(9)-3 of the "Final" regulations, Q&A-3(a) provides, in general, that, with respect to the life expectancy exception to the 5-year rule described in Code section 401(a)(9)(B)(iii), and in A-1, distributions are required to begin to a non-spouse beneficiary on or before the end of the calendar year immediately following the calendar year in which the employee died. This rule also applies if another individual is a designated beneficiary in addition to the employee's (IRA holder's) surviving spouse.

Section 1.401(a)(9)-3 of the "Final" regulations, Q&A-4(a), provides, in relevant part, that in the absence of a plan provision to the contrary, with respect to an individual who dies prior to reaching his required beginning date, if said individual has designated a beneficiary, distributions from his plan or IRA are to be made in accordance with the life expectancy rule of Code sections 401(a)(9)(B)(iii) and (iv).

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-5(b), provides, in general, that if an employee dies before his required beginning date, in order to satisfy the requirements of Code section 401(a)(9)(B)(iii) or (iv) and the life expectancy rule described in A-1 of section 1.401(a)(9)-3, the applicable distribution period for distribution calendar years after the distribution calendar year containing the employee's date of death is determined in accordance with paragraph (c) of this A-5.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-5(c)(1), provides, in general, that, with respect to a non-spouse beneficiary, the applicable distribution period measured by the beneficiary's remaining life expectancy is determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the employee's death. In subsequent calendar years, the applicable distribution period is reduced by one for each calendar year that has elapsed after the calendar year immediately following the calendar year of the employee's death.

Section 1.401(a)(9)-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)-8 of the "Final" regulations, Q&A- 2(a), provides the "separate account" rules with respect to defined contribution plans.

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

Section 1.401(a)(9)-9 of the "Final" Regulations, Q&A-1, sets forth the "Single Life Table" to be used to determine the life expectancy of an individual. The "Single Life Table" indicates that the life expectancy of a 47-year old is 37.0 years.

With specific reference to your first ruling request, it has been represented that Trust T is valid under the laws of State U and became irrevocable at the death of Taxpayer A. Furthermore, it has been represented that a copy of the documentation required under the "Final" Regulations promulgated under Code section 401(a)(9) was timely given to the administrator(s) of IRA X. Finally, the identities of the beneficiaries of Trust T, each of whom is a human being, may be determined by perusing its terms.

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

1. That Trust T is a qualified "See-Through Trust" within the meaning of section 1.401(a)(9)-4 of the "Final" Income Tax Regulations, Question and Answer-5.

With respect to your second and third ruling requests, since Trust T, and its sub-trusts, constitute valid "See-Through Trusts", it is necessary to determine who, if anyone, is the designated beneficiary, within the meaning of Code sections 401(a)(9) and 408(a)(6), of Taxpayer A's IRA X. In this regard, we note that IRA X was allocated to the subtrusts created under the terms of Article VIII, Section C, of Trust T to conform to the requirements of State U law. Thus, in accordance with State U law, Trustee W, Trust T's trustee, did not have the discretion to allocate IRA X in such a way that it could be used to satisfy any other bequest of Trust T. In short, it has been represented, and documentation attached to this ruling request support the representation, that the allocation of IRA X to the subtrusts, referenced above, was mandatory and not discretionary.

As noted above, Taxpayers B and C are the only beneficiaries of the two subtrusts referenced above. Also, as noted above, since both Taxpayer B and Taxpayer C had attained age 45 prior to the death of Taxpayer A, distributions from the property used to fund said subtrusts, including IRA X, are to be made directly to Taxpayers B and C, without limitation, and free of trust. This precludes the accumulation of any portion of said distributed amounts for the benefit of other subtrust beneficiaries after the end of the year with respect to which said distribution was made. As a result, Taxpayers B and C, are the only beneficiaries who will receive the distributed amounts and the only beneficiaries who must be considered for purposes of determining who is the designated beneficiary, within the meaning of Code section 401(a)(9)(E), of IRA X. As noted previously, Taxpayer B is older than Taxpayer C. Furthermore, as noted above, Taxpayer B was 47 years of age in calendar year 2004.

Thus, with respect to your second and third ruling requests, we conclude as follows:

2. that Taxpayers B and C are the only individuals who have to be considered potential "designated beneficiaries", as that term is defined in Code section 401(a)(9)(E), for purposes of determining the payout period of distributions from IRA X; .

3. that distributions from IRA X to Taxpayer B may be based on the life expectancy of Taxpayer B, the elder of Taxpayers B and C, using his attained age in calendar year 2004, the year after the year of death of Taxpayer A, and reduced by one during each subsequent calendar year.

This ruling letter assumes that IRA X either was, is, or will be, as represented, qualified within the meaning of Code section Code section 408(a), at all times relevant thereto. It also assumes that Trust T is valid under the laws of State U as represented. Additionally, it assumes the correctness of all facts and representations contained therein.

This letter is directed only to the taxpayer that requested it and is based solely on the representations made with respect thereto. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

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

Any questions regarding this letter ruling should be addressed to , Esquire (ID: -) at 202- - (phone-not a toll-free number) or 202- (FAX).

Sincerely yours,

Frances V. Sloan

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

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

July 1, 2009

Internal Revenué Service
Associate Chief Counsel
Passthroughs and Special Industries
Attn: CC:PA:LPD:DRU
P.O. Box 7604
Ben Franklin Station
Washington DC 20044

Dear Sir or Madam:

[redacted] and [redacted] as Trustee of the [redacted] Supplemental Care Trust jointly request a ruling on the proper treatment of [redacted] individual retirement account and its ownership by the [redacted] Supplemental Care Trust under section 671 and 677(a) of the Internal Revenue Code.

The taxpayer is requesting a reduced user fee and a statement supporting that request is attached hereto as Exhibit "A."

A. Statement of Facts

1. Taxpayer Information

[redacted] individual
[redacted]

[redacted] Supplemental Care Trust, [redacted] Trustee
[redacted]

2. Facts Relating to the Transaction

[redacted] is an individual who was declared disabled by the Social Security Administration in May, 1990. [redacted] is [redacted] and attorney in fact, pursuant to a General Durable Power of Attorney executed by [redacted] on [redacted]

On July 31, 2007, Superior Court No. 1 of Johnson County, Indiana issued an order creating the [redacted] Supplemental Care Trust (the "Trust") and ordering the transfer of all of [redacted] assets and specifically his individual retirement account into the trust. A copy of the Petition to establish the Trust is attached hereto as Exhibit "B," a copy of the Order establishing the Trust is attached hereto as Exhibit "C," and a copy of the Trust itself is attached hereto as Exhibit "D."

[redacted] is the grantor of the Trust. [redacted] is the Trustee of the Trust. The Trust is intended to qualify as a special needs trust pursuant to 42 USC 1396p(d)(4)(A) and provides that [redacted] is the sole beneficiary during [redacted] lifetime and the trustee has complete discretion over distributions of income and principal. The Trustee may accumulate any or all of the Trust income. Any income not distributed in the year received shall be added to trust principal.

All assets in the Trust were contributed by [redacted] [redacted] retains the power to reacquire the Trust corpus by substituting other property of equal value during administration of the Trust. Upon [redacted] death, the balance remaining in the Trust is to be distributed first to the State of Indiana to the extent that the State of Indiana, through the Department of Family and Social Services, has expended funds for [redacted] medical care through the assistance of the Medicaid program. Any funds remaining in the Trust after the repayment to the State of Indiana are to be paid to [redacted] probate estate.

At the time of the court order in 2007, [redacted] primary asset was an individual retirement account at [redacted] All funds in the individual retirement account were contributed by [redacted]

On September 18, 2007, [redacted] and [redacted] signed paperwork with [redacted] to retitle IRA account # [redacted] into the name of the [redacted] Supplemental Care Trust. No distribution was requested and, since no distribution was contemplated, no withholding was requested. A copy of the request is attached hereto as Exhibit "E." [redacted] has advised counsel for [redacted] that it rejected this request on September 24, 2007.

On March 4, 2008, [redacted] financial advisor faxed the same paperwork as Exhibit "E" above to [redacted] with a letter asking that the assets held in the IRA be transferred to the Trust immediately. A copy of that fax is attached hereto as Exhibit "F."

On March 6, 2008, [redacted] distributed the individual retirement account into a new account in the name of the [redacted] Supplemental Care Trust, asserting that an IRA could not be held in the name of a Trust. In January 2009, [redacted] received a Form 1099 reflecting the IRA distribution. A copy of the Form 1099 is attached hereto as Exhibit "G."

After much discussion, [redacted] confirmed the transactions detailed above to [redacted] counsel. [redacted] has informed counsel that the above transactions can be rectified, however, [redacted] will only undertake the necessary transactions upon receipt of a ruling from the Internal Revenue Service as to the ability of a trust such as the [redacted] Supplemental Care Trust to hold an individual retirement account. A copy of the e-mail requesting the ruling is attached hereto as Exhibit "H."

B. Ruling Requested

[redacted] and [redacted] as Trustee of the [redacted] Supplemental Care Trust (the "Taxpayers") jointly request a ruling that:

1. The [redacted] Supplemental Care Trust can hold an individual retirement account as one of the assets of the trust; and
2. The transfer of an individual retirement account from [redacted] individually, to the [redacted] Supplemental Care Trust should have been treated as a trustee to trustee transfer and not a taxable distribution.

C. Statement of Law

The Taxpayers believe that the following sections of the Internal Revenue Code are applicable:

IRC §671 which states:

> Where it is specified in this subpart (Subtitle A, Chapter 1, Subchapter J, Part I, Subpart E) that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor or the other person those items of income, deduction, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under this chapter in computing taxable income or credits against the tax of an individual. Any remaining portion of the trust shall be subject to subparts A through D. No items of a trust shall be included in computing the taxable income and credits of the grantor or of any other person solely on the grounds of his dominion and control over the trust under section 61 (relating to the definition of gross income) or any other providion of this title, except as specified in this subpart.

IRC §675 which states:

> The grantor shall be treated as the owner of any portion of a trust in respect of which:
>
> (1) A power exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party enables the grantor or any person to purchase, exchange, or otherwise deal with or dispose of the corpus or the income therefrom for less than an adequate consideration in money or money's worth.
>
> (2) A power exercisable by the grantor or a nonadverse party, or both, enables the grantor to borrow the corpus or income, directly or indirectly, without adequate interest or without adequate security except where a trustee (other than the grantor) is authorized under a general lending power to make loans to any person without regard to interest or security.
>
> (3) The grantor has directly or indirectly borrowed the corpus or income and has not completely repaid the loan, including any interest, before the beginning of the taxable year. The preceding sentence shall not apply to a loan which provides for adequate interest and adequate security, if such loan is made by a trustee other than the grantor and other than a related

or subordinate trustee subservient to the grantor. For periods during which an individual is the spouse of the grantor (within the meaning of section 672(e)(2)), any reference in this paragraph to the grantor shall be treated as including a reference to such individual.

(4) A power of administration is exercisable in a nonfiduciary capacity by any person without the approval or consent of any person in a fiduciary capacity. For purposes of this paragraph, the term "power of administration" means any one or more of the following powers: (A) a power to vote or direct the voting of stock or other securities of a corporation in which the holdings of the grantor and the trust are significant from the viewpoint of voting control; (B) a power to control the investment of the trust funds either by directing investments or reinvestments, to the extent that the trust funds consist of stocks or securities of corporations in which the holdings of the grantor and the trust are significant from the viewpoint of voting control; or (C) a power to reacquire the trust corpus by substituting other property of an equivalent value.

IRC §677(a) which states:

The grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owners under Section 674, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be

(1) Distributed to the grantor or the grantor's spouse;
(2) Held or accumulated for future distributions to the grantor or the grantor's spouse; or
(3) Applied to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse (except policies of insurance irrevocably payable for a purpose specified in section 170(c) (relating to definition of charitable contributions)).

This subsection shall not apply to a power the exercise of which can only affect the beneficial enjoyment of the income for a period commencing after the occurrence of an event such that the grantor would not be treated as the owner under section 673 if the power were a reversionary interest; but the grantor may be treated as the owner after the occurrence of the event unless the power is relinquished.

Revenue Ruling 85-13 which states in its holdings that:

(1) A's receipt of the entire corpus of the trust in exchange for A's unsecured promissory note constituted an indirect borrowing of the trust corpus which caused A to be the owner of the entire trust under section 675(3) of Code.

(2) At the time A became the owner of the trust, A became the owner of the trust property. As a result, the transfer of trust assets to A was not a sale for federal income tax purposes and A did not acquire a cost basis in those assets Accordingly, when A sole the shares of Corporation Z stock on January 20, 1984, A recognized gain of \$30x (amount realized of \$50x less adjusted basis of \$20x). Further, this holding would apply even if the trust held other assets in addition to A's promissory note if A, under any of the grantor trust provisions, was treated as the owner of the portion of the trust represented by the promissory note because A would be treated as the owner of the purported consideration (the promissory note) both before and after the transaction.

D. Analysis

The [redacted] Supplemental Care Trust (the "Trust" was created by the Johnson County Superior Court pursuant to the requirements of 42 USC1396p(d)(4)(A). [redacted] is the grantor of the trust and all assets in the trust were contributed by [redacted]

The Trust provides that [redacted] has the authority to reacquire the Trust corpus by substituting other property of equal value during administration of the Trust. (See Section 3.2.2 of the Trust, which is attached hereto as Exhibit "D"). Pursuant to IRC §§675(4)(C), this authority results in [redacted] as grantor being treated as the owner of the assets of the trust.

The Trust also provides that [redacted], as Trustee of the Trust has the sole discretion to distribute income to [redacted] or accumulate said income and add it to the principal of the Trust. [redacted] is [redacted] and attorney-in-fact. As such, [redacted] is a nonadverse party and, under IRC §677, if a nonadverse party has the discretion to distribute income to the grantor, the grantor is treated as the owner of those assets. Therefore, [redacted] is treated as the owner of the assets of the Trust.

In Revenue Ruling 85-13, the Service held that, where the grantor of a trust was treated as the owner of the assets of the trust, transfers of assets to and from the trust by the grantor were not considered taxable dispositions of the assets because the grantor was the owner of the asset both before and after the transfer.

Once the individual retirement account owned by [redacted] is transferred to the Trust, [redacted] will, for tax purposes under IRC §675(4)(C) and §677, be treated as the owner of the individual retirement account. Therefore, the transfer of the individual retirement account to the Trust is a transfer pursuant to IRC §402(c) and not a taxable distribution. Because [redacted] remains the owner of the individual retirement account following its transfer into the Trust, the individual retirement account may remain in its tax deferred form regardless of being titled into the Trust.

E. Conclusion

Pursuant to Internal Revenue Code sections 671, 675 and 677(a) and the holdings of Revenue Ruling 85-13, the [redacted] Supplemental Care Trust is a grantor trust all assets of which are treated as owned by [redacted]. Therefore, the transfer of an individual retirement account owned by [redacted] to the Trust owned by [redacted] is a transfer pursuant to Internal Revenue Code section 402(c).

F. Procedural Matters

1. Revenue Procedure 2009-1 Statements
   - *i.* As required by section 7.01(4), no return of the Taxpayers, or any return of a related taxpayer within the meaning of §267, or any return of a member of an affiliated group of which the Taxpayers are also a member within the meaning of §1504 that would be affected by the requested letter ruling is under examination, before Appeals, or before a Federal court.
   - *ii.* As required by section 7.01(5)(a), the Service has not previously ruled on the same or similar issue for the Taxpayers, a related taxpayer, or a predecessor.
   - *iii.* As required by section 7.01(5)(b), the Taxpayers, any related Taxpayers, a predecessor or any representatives have not previously submitted any request involving the same or a similar issue which was withdrawn before a ruling was issued.
   - *iv.* As required by section 7.01(5)(c), the Taxpayers, any related Taxpayers, or any predecessors have not previously submitted any request involving the same or a similar issue which is currently pending with the Service.
   - *v.* The letter ruling does not involve the interpretation of any income or estate tax treaty.
   - *vi.* As required by section 7.01(8), the law in connection with the ruling request is not uncertain and the issue is adequately addressed by relevant authorities.
   - *vii.* As required by section 7.01(9), the Taxpayers have determined that there are no contrary authorities.
   - viii. Pursuant to section 7.02(6), the Taxpayers request a conference on the issues only if the Associate Counsel's office feels that such a request would be helpful or if an adverse decision is indicated.
   - ix. Pursuant to section 7.02(5), the Taxpayers request that any documents relating to the letter request be faxed to their representative, [redacted] at [redacted]
   - x. The Taxpayers are not requesting separate letter rulings on multiple issues.
   - xi. The Taxpayers are not seeking a user fee under paragraph (A)(5)(a) of Appendix A for substantially identical letter rulings.
2. Administrative
   - i. The deletion statement and checklist required by Rev. Proc. 2009-1 are enclosed.
   - ii. The required user fee of $625.00 is enclosed.
   - iii. A Power of Attorney is enclosed.

Sincerely yours,

[redacted] by [redacted] Authorized Representative

____
[redacted]
Date:______________________

[redacted] as Trustee of the [redacted] Supplemental Care Trust by [redacted] Authorized Representative

____
[redacted]
Date:______________________

Declaration:

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts are true, correct and complete.

____
[redacted], as Trustee of the [redacted] Supplemental Care Trust

____
[redacted]

Certification in support of reduced user fee

In support of their request for a reduced user fee, the Taxpayers ([redacted] and [redacted], as Trustee of the [redacted]) state that:

1. [redacted] gross income, as defined under paragraphs (B)(2) and (B)(4) of Appendix A to Revenue Procedure 2009-1, is less than $250,000 as reported on [redacted] last federal income tax return filed for a full taxable year ending before the date of this request.
2. The gross income of the [redacted] Supplemental Care Trust, as defined under paragraphs (B)(2) and (B)(4) of Appendix A to Revenue Procedure 2009-1, is less than $250,000 as reported on his last federal income tax return filed for a full taxable year ending before the date of this request.