Internal Revenue Service

Department of the Treasury

200052040

Washington, DC 20224

408.00-00
408.03-00

Contact Person:

Telephone Number:

In Reference to:
T:EP:RA:T3

Date:
OCT 2 2000

LEGEND:

Taxpayer A:

Taxpayer B:

State C:

Company D:

Date 1:

Date 2:

IRA X:

IRA Y:

Trust Z:

Dear :

This is in response to the , letter submitted on your behalf by your authorized representative, as supplemented by correspondence dated in which you, through your authorized representative, request several letter rulings under section 408 of the Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A, a resident of State C, died on Date 1, 2000, survived by his spouse, Taxpayer B. At his death, Taxpayer A maintained two individual retirement arrangements (IRAs), IRAs X and Y, with Company D.

By means of a beneficiary designation dated Date 2, 1993, Taxpayer A's estate was named the beneficiary of his IRAs X and Y. Pursuant to provisions of Taxpayer A's last will and testament, IRAs X and Y were bequeathed to Trust Z.

Section 2106.01(C) of the Revised Code of State C provides that a surviving spouse who elects to take against the will of her deceased spouse is entitled to receive what she would have received under the

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State C Statute of Descent and Distribution as if the decedent had died intestate. Since Taxpayer A died without children, Taxpayer B is entitled under said section 2106.01(C) to one-half of the net estate of Taxpayer A. Your authorized representative has asserted, on your behalf, that section 2106.01(C) does not require that the assets which constitute a deceased's net estate be provided to an electing surviving spouse on a pro rata basis.

Taxpayer B intends to elect against the will of Taxpayer A. Pursuant to said election, Taxpayer B, as part of the 50% of the estate of Taxpayer A to which she will then become entitled, will receive Taxpayer A's IRA X and his IRA Y. Taxpayer B will then roll over the proceeds of said IRAs X and Y into an IRA set up and maintained in her name. The rollover(s) will occur within 60 days of the date (or dates) upon which she receives a distribution (or distributions) of the proceeds of IRA X and IRA Y.

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

1. That, if Taxpayer B elects against the will of Taxpayer A and receives the proceeds of IRAs X and Y, she will be treated as the payee or distributee thereof for purposes of Code section 408(d)(3);

2. that IRAs X and Y will not be treated as inherited IRAs within the meaning of Code section 408(d) with respect to Taxpayer B;

3. that Taxpayer B is eligible to roll over the distribution(s) from IRAs X and Y into an IRA set up and maintained in her name pursuant to Code section 408(d)(3)(A)(i) as long as the rollover(s) of such distribution(s) occur no later than the 60th day (or days) following the day (or days) on which the IRA proceeds that are distributed from Taxpayer A's IRAs X and Y are received by Taxpayer B; and

4. that Taxpayer B will not be required to include in her gross income for federal income tax purposes for the year in which said distributions occur and the year in which said rollover(s) are timely made, any portion of the amounts distributed from said IRA X or said IRA Y and rolled over into an IRA set up and maintained in Taxpayer B's name.

With respect to your ruling requests, Code section 408(d)(1) provides that, except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

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

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

Code section 408(d)(3)(C)(i) provides, in pertinent part, that, in the case of an inherited IRA, section 408(d)(3) shall not apply to any amount received by an individual from such account (and no amount transferred from such account to another IRA shall be excluded from income by reason of such transfer), and such inherited account shall not be treated as an IRA for purposes of determining whether any other amount is a rollover contribution.

Code section 408(d)(3)(C)(ii) provides that an IRA shall be treated as inherited if the individual for whose benefit the account is maintained acquired such account by reason of the death of another individual, and such individual was not the surviving spouse of such other individual. Thus, pursuant to Code section 408(d)(3)(C)(ii), a surviving spouse who acquires IRA proceeds from and by reason of the death of her husband, may elect to treat those IRA proceeds as her own and roll them over into her own IRA.

Section 1.408-8 of the Proposed Income Tax Regulations, Q&A A-4, provides that a surviving spouse is the only individual who may elect to treat a beneficiary's interest in an IRA as the beneficiary's own account. If a surviving spouse makes such an election, the spouse's interest in the account would then be subject to the distribution requirements of section 401(a)(9)(A) rather than those of section 401(a)(9)(B). Q&A A-4 further provides, in pertinent part, that an election will be considered to have been made by a surviving spouse if either of the following occurs: (1) any required amounts in the account (including any amounts that have been rolled over or transferred, in accordance with the requirements of section 408(d)(3)(A)(i), into an IRA for the benefit of such surviving spouse) have not been distributed within the appropriate time period applicable to the decedent under section 401(a)(9)(B), or (2) any additional amounts are contributed to the account (or to the account or annuity to which the surviving spouse has rolled such amounts over, as described in (1) above) which are subject, or deemed to be subject, to the distribution requirements of section 401(a)(9)(A). The result of such an election is that the surviving spouse shall then be considered the individual for whose benefit the trust is maintained.

Q&A A-4 of section 1.408-8 of the proposed regulations provides that a surviving spouse may elect to treat an IRA of her deceased

spouse as her own. Q&A A-4 lists actions by which a surviving spouse makes said election. However, Q&A A-4 does not provide the exclusive methods by which a surviving spouse so elects.

Generally, if the proceeds of a decedent's IRA are payable to an estate, and are paid to the executrix of the estate who then pays them to the decedent's surviving spouse, said surviving spouse shall be treated as having received the IRA proceeds from the estate and not from the decedent. Accordingly, such surviving spouse, generally, shall not be eligible to roll over (or have transferred) said distributed IRA proceeds into her own IRA.

However, the general rule will not apply in a case where a surviving spouse, pursuant to the laws of the state of domicile of the deceased, elects to take against the will of her deceased husband, and, pursuant to said election, receives two IRAs of her deceased husband which she then timely rolls over into an IRA set up and maintained in her name.

In this case, Taxpayer B will elect, pursuant to the laws of State C, the state of domicile of Taxpayer A at his death, to take against the will of Taxpayer A. As a result of said election, Taxpayer B will receive Taxpayer A's IRAs X and Y. Taxpayer B then will, no later than the 60th day following the date (or dates) on which she receives Taxpayer A's IRAs X and Y, roll over said IRAs X and Y into an IRA set up and maintained in the name of Taxpayer B. Under this set of facts, the Service will not apply the general rule set forth above.

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

1. That, if Taxpayer B elects against the will of Taxpayer A and receives the proceeds of IRAs X and Y, she will be treated as the payee or distributee thereof for purposes of Code section 408(d)(3);

2. that IRAs X and Y will not be treated as inherited IRAs within the meaning of Code section 408(d) with respect to Taxpayer B;

3. that Taxpayer B is eligible to roll over the distribution(s) from IRAs X and Y into an IRA set up and maintained in her name pursuant to Code section 408(d)(3)(A)(i) as long as the rollover(s) of such distribution(s) occur no later than the 60th day (or days) following the day (or days) on which the IRA proceeds that are distributed from Taxpayer A's IRAs X and Y are received by Taxpayer B; and

4. that Taxpayer B will not be required to include in her gross income for federal income tax purposes for the year in which said distributions occur and the year in which said

rollover(s) are timely made, any portion of the amounts distributed from said IRA X or said IRA Y and rolled over into an IRA set up and maintained in Taxpayer B's name.

This ruling letter is based on the assumption that IRAs X and Y, referenced herein, either have complied or will comply with the requirements of Code section 408(a) at all times relevant thereto. It also assumes that Taxpayer B's rollover IRA will comply with the requirements of Code section 408(a) at all times relevant thereto.

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

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

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Manager,
Employee Plans
Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of letter ruling
Form 437