Internal Revenue Service

Department of the Treasury

200052041

Washington, DC 20224

UIC: 408.00-00
408.06-00

Contact Person:

Telephone Number:

In Reference to:
T:EP:RA:T3

Date:

OCT 2 2000

LEGEND:

Taxpayer A:

Taxpayer B:

Subtrust C:

Subtrust D:

Subtrust E:

Date 1:

Date 2:

Date 3:

IRA X:

Trust Y:

Company Z:

Dear :

This is in response to the letter submitted on your behalf by your authorized representative, in which you, through your authorized representative, request several letter rulings under section 408(d)(3) of the Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 1, died on Date 2, 1999 prior to attaining age 70 ½. Taxpayer A was survived by his spouse, Taxpayer B, whose date of birth was Date 3, and who also has not attained age 70 ½. At his death, Taxpayer A maintained an individual retirement arrangement (IRA), IRA X, with Company Z. Your authorized representative asserts that IRA X meets the requirements of Code section 408(a).

Prior to his death, Taxpayer A named Trust Y as the beneficiary of his IRA X. Taxpayers A and B were the settlors of Trust Y, and

258

Taxpayers A and B were the co-trustees of Trust Y. Upon the death of Taxpayer A, Taxpayer B became the sole trustee of Trust Y.

Section 3.01 of Trust Y provides, in pertinent part, that upon the demise of the first settlor to die, the trustee shall divide the trust estate into three separate subtrusts, Subtrusts C, D, and E.

Section 9A.1.2 of Trust Y provides that if the trustee of Trust Y has been named the beneficiary of a deceased spouse's interest in any benefit plan, then the deceased spouse's interest in such benefit plan shall be allocated to Subtrust E and the provisions of this Article (Article 9A) shall apply.

Section 9A.2.2 of Trust Y provides that if the required beginning date has not occurred at the time of death of Deceased Spouse, the Trustee shall elect to receive distributions from the Benefit Plan in annual or more frequent installments over the period measured by the Surviving Spouse's life expectancy if the Benefit Plan so allows.

Section 5.01 of Trust Y provides, in pertinent part, that the Trustee of Trust Y shall pay to or apply for the benefit of the Surviving Spouse all of the income of Subtrust E in quarter-annual or more frequent installments. Section 5.01 of Trust Y further provides that if the Trustee considers such payments (of income) insufficient, the Trustee shall also pay or apply for the benefit of the Surviving Spouse such sums out of the principal of Subtrust E as the Trustee in the Trustee's discretion shall consider necessary for the Surviving Spouse's proper health, support, maintenance, and education in accordance with his or her accustomed manner of living at the date of this instrument.

Section 8.21 of Trust Y provides, in pertinent part, that the trustee has the power to take any action or make any election in order to minimize the tax liabilities of the trust and its beneficiaries.

Section 9A.4.3 of Trust Y provides that, during the life of the Surviving Spouse, a power of appointment over any portion of a Benefit Plan or a Retirement Plan may be exercised only in favor of the Surviving Spouse.

Section 9A.6 of Trust Y provides that, with respect to any Benefit Plan, Trust Y shall become irrevocable on the earlier of the death of the plan participant or on the plan participant's required beginning date under the plan.

Your authorized representative asserts that the term "Benefit Plan" under Trust Y includes an IRA described in Code section 408(a).

Taxpayer B, as trustee of Trust Y, intends to allocate Taxpayer A's IRA X to Subtrust E under Trust Y. Taxpayer B will then appoint IRA X to herself as beneficiary of Subtrust E. After the exercise of said power of appointment, Taxpayer B will receive the proceeds of IRA

X and will then roll over said proceeds into an IRA set up and maintained in the name of Taxpayer B. Said rollover will occur no later than the 60th day following the day upon which the IRA X proceeds are allocated to Subtrust E.

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

1. That, if Taxpayer B appoints IRA X to herself and receives the proceeds of IRA X, she will be treated as the payee or distributee thereof for purposes of Code section 408(d)(3);

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

3. that Taxpayer B is eligible to roll over the distribution from IRA X into an IRA set up and maintained in her name pursuant to Code section 408(d)(3)(A)(i) as long as the rollover of such distribution occurs no later than the 60th day following the day said IRA X proceeds are allocated to Subtrust E of Trust Y; 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 IRA X distribution occurs and the year in which said rollover is timely made, any portion of the amounts distributed from said IRA X and timely 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 a trust, and are paid to the trustee of the trust who then pays them to the decedent's surviving spouse as beneficiary of the trust, said surviving spouse shall be treated as having received the IRA proceeds from the trust 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 the surviving spouse is the sole trustee of the decedent's trust who must allocate an IRA to a specific subtrust under the trust, and who, after such allocation, appoints the IRA to the surviving spouse who then

receives the IRA proceeds and rolls them into an IRA set up and maintained in her name.

In this case, Taxpayer B is the sole trustee of Trust Y who, pursuant to trust terms, must allocate IRA X to Subtrust E under Trust Y. Once the IRA has been allocated to Subtrust E, Taxpayer B will appoint the IRA to herself as a beneficiary of Subtrust E. Once the IRA has been so appointed, Taxpayer B will take the IRA proceeds and roll then into an IRA set up and maintained in her name. The rollover will occur no later than the 60th day following the date on which the IRA was allocated to Subtrust E. 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 appoints IRA X to herself and receives the proceeds of IRA X, she will be treated as the payee or distributee thereof for purposes of Code section 408(d)(3);

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

3. that Taxpayer B is eligible to roll over the distribution from IRA X into an IRA set up and maintained in her name pursuant to Code section 408(d)(3)(A)(i) as long as the rollover of such distribution occurs no later than the 60th day following the day said IRA X proceeds are allocated to Subtrust E of Trust Y; 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 IRA X distribution occurs and the year in which said rollover is timely made, any portion of the amounts distributed from said IRA X and timely rolled over into an IRA set up and maintained in Taxpayer B's name.

This ruling letter is based on the assumption that IRA X, referenced herein, either has 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