200106047

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

UIC: 408.00-00
408.03-00

Contact Person:

Telephone Number:

In Reference to: EP:RA:T3

Date:

NOV 17 2000

LEGEND:

Taxpayer A:

Taxpayer B:

Date 1:

Date 2:

Date 3:

Date 4:

IRA X:

IRA Y:

Company W:

Company 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(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, 2000 after attaining age 70 ½. Taxpayer A was survived by his spouse, Taxpayer B. At his death, Taxpayer A maintained an individual retirement arrangement (IRA), IRA X, with Company W. Your authorized representative asserts that IRA X met the requirements of Code section 408(a).

Prior to his death, Taxpayer A named his estate as the beneficiary of his IRA X. Taxpayer B is the sole executrix of Taxpayer

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A's estate. Additionally, Taxpayer B is the residuary beneficiary of Taxpayer A's estate.

On Date 3, 2000, all amounts standing in Taxpayer A's IRA X were distributed into an account maintained in the name of Taxpayer A's estate. On Date 4, 2000, the amount distributed from IRA X was transferred by Taxpayer B, as the sole executrix of Taxpayer A's estate, into IRA Y, an IRA set up and maintained in the name of Taxpayer B with Company Z. Date 4 fell within 60 days of Date 3.

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

1. That Taxpayer B will be treated as the payee or distributee of IRA X 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 was eligible to roll over the distribution from IRA X into IRA Y, an IRA set up and maintained in her name pursuant to Code section 408(d)(3)(A)(i), since the rollover of such distribution occurred no later than the 60th day following the day said IRA X proceeds were distributed from said IRA X; and

4. that Taxpayer B will not be required to include in her gross income for federal income tax purposes for calendar year 2000, the year in which said IRA X distribution occurred and the year in which said rollover was timely made, the amounts distributed from said IRA X and timely rolled over into IRA Y, 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.

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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 estate, and are paid to the executrix of the estate who then pays them to the decedent's surviving spouse as beneficiary of the estate, 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.

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However, the general rule will not apply in a case where the surviving spouse is the sole executrix of the decedent's estate who pays the IRA proceeds to the surviving spouse, in order to satisfy the residuary bequest under decedent's will, which surviving spouse then receives the IRA proceeds and transfers them into an IRA set up and maintained in her name.

In this case, Taxpayer B is the sole executrix of the estate of Taxpayer A, who, pursuant to the terms of Taxpayer A's will, allocated IRA X to Taxpayer A's residuary estate. Taxpayer B is the sole residuary beneficiary under Taxpayer A's will. As part of Taxpayer B's residuary bequest under Taxpayer A's will, the IRA X proceeds were transferred into IRA Y, an IRA set up and maintained in the name of Taxpayer B. Said transfer occurred within 60 days of the date on which the IRA X proceeds were distributed from IRA X. 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 Taxpayer B will be treated as the payee or distributee of IRA X 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 was eligible to roll over the distribution from IRA X into IRA Y, an IRA set up and maintained in her name, pursuant to Code section 408(d)(3)(A)(i) since the rollover of such distribution occurred no later than the 60th day following the day said IRA X proceeds were distributed from said IRA X; and

4. that Taxpayer B will not be required to include in her gross income for federal income tax purposes for calendar year 2000, the year in which said IRA X distribution occurred and the year in which said rollover to IRA Y was timely made, the amounts distributed from said IRA X and timely rolled over into IRA Y, 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, IRA Y, 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.

200106047

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

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