Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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401.06-02
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Contact Person:

Telephone Number:

In Reference to:

Date: T:EP:RA:T3

FEB 26 2001

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Taxpayer D:

State W:

IRA X:

IRA Y:

IRA Z:

Date 1:

Date 2:

Date 3:

Date 4:

Dear :

This is in response to the , letter submitted on your behalf by your authorized representative, as supplemented by correspondence dated , , and , in which you, through your authorized representative, request a series of letter rulings under sections 401(a)(9) and 408(d)(3) of the Internal Revenue Code. The following facts and representations support your ruling request.

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Taxpayer A, whose date of birth was Date 1, died on Date 2, 1996 without having attained age 70 ½. Taxpayer A would have attained age 70 ½ on Date 4, 1998.

Taxpayer A was survived by his wife, Taxpayer B, whose date of birth was Date 3, 1932. Taxpayer A was a resident of State W at the time of his death.

At his death, Taxpayer A maintained an individual retirement arrangement (IRA), IRA X. Prior to his death, Taxpayer A had named Taxpayer B as the beneficiary of 45% of his IRA X and Taxpayers C and D as equal beneficiaries of the remaining 55% of his IRA X.

Subsequent to the death of Taxpayer A, during calendar year 1996, Taxpayer A's interest in IRA X was divided into two (2) new IRAs, IRA Y and IRA Z. IRAs Y and Z were set up and have been maintained in the name of Taxpayer A. One half of Taxpayer B's 45% interest in IRA X, as adjusted for gains and losses, is currently in IRA Y, and the other half, adjusted for gains and losses, is currently in IRA Z. Additionally, one half of the 55% interest of Taxpayers C and D is currently in IRA Y, and the other half is currently in IRA Z.

To date, Taxpayer B has not received any distribution from either IRA Y or IRA Z.

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

1. That, for purposes of Code sections 401(a)(9), Taxpayer B may be treated as the designated beneficiary of 45% of Taxpayer A's IRA X;

2. that, for purposes of Code sections 401(a)(9), Taxpayer B may be treated as the designated beneficiary of the one-half of her 45% interest in IRA X, as adjusted for gains and losses, which is currently in IRA Y;

3. that, for purposes of Code sections 401(a)(9), Taxpayer B may be treated as the designated beneficiary of the one-half of her 45% interest in IRA X, as adjusted for gains and losses, which is currently in IRA Z;

4. that Taxpayer B's "required beginning date", under Code section 401(a)(9)(B), with respect to her 45% interest in IRA X, currently in IRAs Y and Z, was December 31, 1998;

5. that Taxpayer B is deemed to have elected to treat her 45% interest in IRA X, currently in IRAs Y and Z, as her own as of December 31, 1998, since she received no distribution from either IRA X, IRA Y or IRA Z by that date;

6. that, pursuant to Code section 408(d)(3), Taxpayer B may roll over, or transfer, her interest (45%) in IRAs Y and Z into one or more IRAs set up and maintained in the name of Taxpayer B;

7. that, pursuant to Code section 408(d)(3)(A), the rollover or transfer of Taxpayer B's 45% interest in IRA X, currently in IRAs Y and Z, into one or more IRAs in her name, shall not constitute a taxable event with respect to Taxpayer B; and

8. that, as a result of Taxpayer B's deemed election which is the subject of ruling request five (5) (above), Taxpayer B's 45% interest in IRA X, now found in IRAs Y and Z, is subject to the rule found at Code section 401(a)(9)(A) instead of the rule of Code section 401(a)(9)(B).

With respect to your ruling requests, section 408(a)(6) of the Code 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 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 employee (IRA holder) attains age 70 1/2.

Code section 401(a)(9)(D) provides that for purposes of Code section 401(a)(9), a "designated beneficiary" is any individual designated as such by the employee (IRA holder).

Section 1.401(a)(9)-1 of the Proposed Income Tax Regulations, Question and Answer D-3, provided that for purposes of calculating the distribution period for distributions that begin prior to death, the designated beneficiary will be determined as of the plan participant's (IRA holder's) required beginning date.

Section 401(a)(9)(B)(ii) of the Code provides, in general, that where an employee (IRA holder) dies prior before the distribution of his interest in the plan (or IRA) has begin pursuant subparagraph (A)(ii), the entire interest of the employee will be distributed within 5 years of the death of the employee.

Section 401(a)(9)(B)(iii) of the Code provides an exception to the above referenced 5-year rule. Under the exception, any portion of an employee's interest payable to a designated beneficiary which is to be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary) may be so distributed beginning not later than 1 year after the date of the employee's death or such later date as the Secretary may by regulations prescribe.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A C-3(a), provided that, in order to satisfy the exception to the five-year rule for nonspouse beneficiaries, distributions must commence on or before December 31 of the calendar year immediately following the calendar year in which the employee died. This rule also applies to the distribution of the entire remaining benefit if, as of the employee's date of death, an individual is designated as a beneficiary in addition to the employee's surviving spouse. Q&A C-3(a) also refers to Qs&As H-2 and H-2A in the case where an employee's benefit is divided into separate accounts.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A C-3(b), provided that in order to satisfy the exception to the five-year rule if the designated beneficiary is the employee's surviving spouse, distributions must commence on or before the later of (1) December 31 of the calendar year immediately following the calendar year in which the employee dies, and (2) December 31 of the calendar year in which the employee would have attained age 70 ½.

Section 1.401(a)(9)-1 of the Proposed Income Tax Regulations, Question and Answer H-2(b), provided, in summary, that if, as of an employee's (IRA holder's) required beginning date, or date of death, the beneficiaries with respect to a separate account differ from the beneficiaries with respect to other separate accounts of the employee, such separate account need not be aggregated in order to determine whether the distributions from such separate account satisfy section 401(a)(9). Instead the rules in section 401(a)(9) may separately apply to such separate account.

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Section 1.401(a)(9)-1 of the Proposed Income Tax Regulations, Question and Answer H-2(c) provided that for purposes of Code section 401(a)(9), a separate account in an individual account is a portion of an employee's benefit determined by an acceptable separate accounting including allocating investment gains and losses, and contributions and forfeitures, on a pro rata basis in a reasonable and consistent manner between such portion and any other benefits.

In this case, Taxpayer B, the surviving spouse of Taxpayer A, was the sole beneficiary of 45% of Taxpayer A's IRA X. As noted above, Taxpayer B was named the beneficiary of a 45% interest in Taxpayer A's IRA X prior to Taxpayer A's death which death occurred prior to the date on which Taxpayer A would have attained age 70 ½. . Additionally, she is currently the sole beneficiary of 45% of IRAs Y and Z which hold the assets previously held in IRA X. Furthermore, IRAs Y and Z were set up and have been maintained in the name of Taxpayer A. Additionally, the documentation submitted with this ruling request indicates that Taxpayer B's 45% interest in IRA X, which is currently divided into 45% interests in IRAs Y and Z, has been adjusted for gains and losses. Furthermore, the documentation submitted with this ruling request indicates that Taxpayer B's 45% interest(s) in such IRAs have been allocated gains and losses distinct from the gains and losses allocated to the remaining 55% interests in the IRAs, and, where applicable, charged with its appropriate share of expenses incurred by the IRAs.

In accordance with section 1.401(a)(9)-1 of the proposed regulations, Q&A C-3(b) (above), Taxpayer B, as beneficiary of distinct 45% interests in IRAs Y and Z, should have begun to receive required distributions from said interests as a beneficiary thereof under Code section 401(a)(9)(B) and Section 1.401(a)(9)-1 of the proposed regulations, Q&A C-3(b), no later than December 31, 1998, since 1998 was the calendar year in which Taxpayer A would have attained age 70 ½.

Thus, with respect to your first, second, third and fourth ruling requests, the Service concludes as follows:

1. That, for purposes of Code sections 401(a)(9), Taxpayer B may be treated as the designated beneficiary of 45% of Taxpayer A's IRA X;

2. that, for purposes of Code sections 401(a)(9), Taxpayer B may be treated as the designated beneficiary of the one-half of her 45% interest in IRA X, as adjusted for gains and losses, which is currently in IRA Y;

3. that, for purposes of Code sections 401(a)(9), Taxpayer B may be treated as the designated beneficiary of the one-half of her 45% interest in IRA X, as adjusted for gains and losses, which is currently in IRA Z;

4. that Taxpayer B's "required beginning date", under Code section 401(a)(9)(B), with respect to her 45% interest in IRA X, currently in IRAs Y and Z, was December 31, 1998.

With respect to your fifth through eighth 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, provided 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 provided, 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 provided that a surviving spouse may elect to treat an IRA of her deceased spouse as her own. Q&A A-4 listed actions by which a surviving spouse makes said election. However, Q&A A-4 did not provide the exclusive methods by which a surviving spouse so elects.

As noted above, Taxpayer B, as beneficiary of 45% interests in IRAs Y and Z, should have begun to receive required distributions from said interests as a beneficiary thereof no later than December 31, 1998. However, as also noted above, as of the date of this ruling request, Taxpayer B has not received any distribution of her interest in either IRA Y or IRA Z. Thus, pursuant to the underlined portion of section 1.408-8 of the Proposed Income Tax Regulations, Q&A A-4 (above), Taxpayer B's failure to receive distributions from either IRA Y or IRA Z constituted an election on her part to treat her separate 45% interests in the IRAs as her own IRAs. As a result of said elections, said IRA interests became subject to the requirements of Code section 401(a)(9)(A) pursuant to which distributions therefrom must commence with reference to Taxpayer B's required beginning date which is April 15 of the calendar year following the calendar year in which Taxpayer B will attain age 70 ½. Additionally, said IRA interests now constitute her property which she may roll over or transfer into one or more new IRAs set up and maintained in her name pursuant to the provisions of Code section 408(d)(3). Finally, distributions from said 45% interests must commence and continue without regard to whether distributions either have commenced or will commence from the portions of IRAs Y and Z which hold the 55% interests therein of which Taxpayers C and D are beneficiaries.

Thus, with respect to your fifth through eighth ruling requests, the Service concludes as follows;

5. that Taxpayer B is deemed to have elected to treat her 45% interest in IRA X, currently in IRAs Y and Z, as her own as of December 31, 1998, since she received no distribution from either IRAX, IRA Y or IRA Z by that date;

6. that, pursuant to Code section 408(d)(3), Taxpayer B may roll over, or transfer, her interest (45%) in IRAs Y and Z into one or more IRAs set up and maintained in the name of Taxpayer B;

7. that, pursuant to Code section 408(d)(3)(A), the rollover or transfer of Taxpayer B's 45% interest in IRA X, currently in IRAs Y and Z, into one or more IRAs in her name, shall not constitute a taxable event with respect to Taxpayer B; and

8. that, as a result of Taxpayer B's deemed election which is the subject of ruling request five (5) (above), Taxpayer B's 45% interest in IRA X, now found in IRAs Y and Z, is subject to the rule found at Code section 401(a)(9)(A) instead of the rule of Code section 401(a)(9)(B).

This ruling request assumes that IRAs X, Y and Z have met and will continue to meet the requirements of Code section 408(a) at all time relevant thereto. Furthermore, the Service's response in this ruling letter does not address any income or excise tax consequences, if any, to either Taxpayer C or Taxpayer D arising out of their beneficiary interests in IRAs X, Y and Z.

Finally, the conclusions reached by the Service in this letter ruling are based on the provisions of section 1.401(a)(9)-1 of the proposed regulations without regard to the changes made to them published in January, 2001.

Pursuant to a power of attorney on file with this office, a copy of this letter 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