Uniform Issue List: 408.00-00, 401.00-00

200128056

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Person To Contact

Telephone Number:

Refer Reply To:
T:EP:RA:T3

Date:
APR 16 2001

Legend:

Decedent =

Custodian F =

Trust G =

Individual A =

Dear

This is in response to a request for a ruling, dated November 2, 2000, submitted by your authorized representative, concerning the tax consequences of a certain proposed rollover of the proceeds from an Individual Retirement Account ("IRA") following the death of Decedent.

You are the spouse of Decedent. Decedent, whose date of birth was **********, ****, died **********, at the age of **. You were born **********, and were ** at the date of Decedent's death. Decedent created Trust G in ******. Decedent was the grantor and trustee of Trust G. Trust G was revocable during Decedent's lifetime and became irrevocable upon Decedent's death. Individual A was named as successor trustee of Trust G, in case of Decedent's death or inability to serve.

At the time of Decedent's death, Decedent was the owner of an IRA with Custodian F. The IRA meets the requirements of section 408(a) of the Internal Revenue Code. Pursuant to the Designation of Beneficiary set forth in the adoption agreement, Decedent designated himself, as trustee under Trust G, as the primary beneficiary of the IRA. Decedent had not begun to take distributions from the IRA as of the date of his death and had not made any election as to the form of distribution from the IRA that could restrict the ability of the trust with respect to his distribution election.

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Trust G provides for the disposition of the trust assets upon Decedent's death in the event you survived Decedent. The provisions provide for the creation of three trusts: Trust A, Trust B and Trust C.

Trust G provides, in part, that the amount allocated to Trust C, "shall be an amount equal to the maximum amount, if any, that can pass under this subparagraph and result in no federal estate tax by reason of the unified credit (but no other credit) available to the Grantor's estate for federal estate tax purposes after taking into consideration all property and interests in property included in determining Grantor's gross estate for federal estate tax purposes which pass or have passed under other paragraphs of this Trust Agreement, under Grantor's will, and otherwise than under this Trust Agreement and such Will." In addition, Paragraph FIRST.B. 1 (a) of the Trust Agreement includes the following sentence: "subject to the foregoing, the allocation of property and interests in property (including case) to Trust C in satisfaction of the amount above described shall be made by the Trustee, in the Trustee's discretion: PROVIDED, that the property and interests in property to [sic] allocated shall have fair market values at the date or dates of allocation aggregating the amount above described."

Paragraph FIRST.B. 1(b) of Trust G provides, in part,, that the amount allocated to Trust B "shall be an amount, if any, equal to the GST exemption provided for in section 2631(a) of the Internal Revenue Code of 1986, as amended, which remains available to Grantor's estate, after any allocation to Trust C." In addition, Paragraph FIRST.B.1 of Trust G provides that "[t]he allocation of property and interests in property and interests in property (including cash) to Trust B in satisfaction of the amount above described shall be made by the Trustee, in the Trustee's discretion; PROVIDED, that the property and interests in property so allocated shall have fair market values at the date or dates of allocation aggregating the amount above described."

Paragraph FIRST.B. 1 (c) of Trust G provides that, "[a]ll of the rest of the entire then remaining principal of the trust estate shall thereafter be separately held, administered and distributed as Trust A upon the terms and limitations hereinafter set forth."

As reflected on Decedent's federal gift tax returns and federal tax return, Decedent made lifetime taxable gifts totaling $561,736, all of which were potentially subject to generation-skipping transfer tax ("GSTT"). As reflected on the Decedent's federal tax returns and Schedule R, part 1, line 7 of the Decedent's federal estate tax return, Decedent allocated $561,736 of his GSTT exemption to these transfers. As a result of these prior taxable gifts, under the terms of Trust G, 38,264 will be allocated to Trust C ($600,000 unified credit exemption equivalent less $561,736 of prior taxable gifts), to be funded with assets having a fair market value at the date or dates of allocation aggregating this amount, and $438,264 will be allocated to Trust B ($1,000,000 GSST exemption less $561,736 of GSTT exemption allocated to prior taxable gifts), to be funded with assets having a fair market value at the date or dates of allocation aggregating this amount. Under the terms of Trust G, the balance of the trust estate will be allocated to Trust A.

Under the terms of paragraph FIRST.B. 1 (a) of Trust G, Trust C is to be distributed to Decedent's issue who survive him, *per stirpes.* Under the terms of paragraph FIRST.C of Trust G, Trust A and Trust B are to be held for your benefit. The trustee is directed to distribute all of the net income derived from each of Trust A and Trust B, at least quarter-annually, to you. In addition, the Trustee is authorized to distribute to you such amounts from the principal of Trust A and Trust B as the Trustee, in the Trustee's absolute discretion, deems necessary or advisable for your health, support and maintenance. In addition,

paragraph FIRST.C.2 provides in part, that you "shall have the power, at any time and from time to time, to withdraw any part of all of the principal of Trust A, and the Trustee shall promptly comply with any written request by her."

The Trustee intends to fund Trust C with cash and other assets, none of which will consist of distributions from the IRA, having a value as of the date of distribution of $38,264. The Trustee intends to fund Trust B with cash and other assets, none of which will consist of distributions from the IRA, having a value as of the date of distribution of $438,264. The Trustee intends to allocate the entire balance of the IRA to Trust A. For purposes of this ruling request, the IRA should be treated as consisting of two amounts, the "Base Amount, and the "Rollover Amount." The Base Amount is $476,528, which is the sum of the amounts to be allocated to Trust B and Trust C. The Rollover Amount is the remaining value of the IRA in excess of the Base Amount. Because the provisions of paragraph FIRST.B.1(a) limit the amount of Trust B to the amount of the unused GST exemption, the Trustee has no discretion to allocate the Rollover Amount to Trust B or to Trust C, but must allocate the Rollover Amount to Trust A. The Base Amount could be allocated either entirely to Trust A, or entirely to Trust B and Trust C, or partly to each, although the Trustee intends to allocate the Base Amount to Trust A.

The Trustee, as trustee of Trust A, intends to request a distribution of the Rollover Amount from the IRA to be distributed to Trust A. Upon receipt by the Trustee of the Rollover Amount from the IRA into Trust A, you intend to withdraw the Rollover Amount from Trust A, and roll over such funds to an IRA, set up and maintained in your name. The rollover will be made no later than 60 days from the date that the distribution of the Rollover Amount from the IRA is made to Trust A. You have not, and will not, roll over any amounts from a qualified pan or IRA into another qualified plan or IRA during the one-year period ending on the day that you received distribution of the Rollover Amount from Trust A.

Based upon the above facts, rulings are requested that:

1. You will be treated as the payee or distributee of the IRA with respect to the Rollover Amount.

2. The Rollover Amount does not represent an inherited IRA within the meaning of section 408(d)(3)(C) of the Code with respect to you.

3. You are eligible to roll over the Rollover Amount into an IRA set up an maintained in your name pursuant to section 408(d)(3) of the Code, as long as the rollover of such distribution occurs no later than 60 days after the date of the Rollover Amount is received by Trust A.

4. You will not be required to include in gross income for federal income tax purposes for the year in which the Rollover Amount is timely made(or any prior year) any portion of the Rollover Amount rolled over to the IRA set up and maintained in your name.

With respect to the four ruling requests, Section 408(d)(1) of the Code provides, in general, that except as otherwise provided in section 408(d), any amount paid or distributed from an IRA shall be included in gross income by the payee or distributee, as the case may be.

Section 408(d)(3) of the Code 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 (B).

Section 408(d)(3)(A)(i) of the Code 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 distributions.

Section 408(d)(3)(B) of the Code provides that section 408(d)(3)(A) does not apply to any amount described in section 408(d)(3)(A)(i) if at any time during the one-year period ending on the day of such receipt such individual received any other amount described in such subparagraph from an IRA which was not includible in his gross income because of the application of section 408(d)(3)(A).

Section 408(d)(3)(C)(i) of the Code 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 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.

Section 408(d)(3)(C)(ii) of the Code 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 section 408(d)(3)(C)(ii) of the Code, 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.

Sections 401(a)(9)(B)(ii) and (iii) of the Code set forth, respectively, the 5-year rule and the exception to it for the distribution of the interest of any employee who dies before distributions have begun in accordance with subparagraph (A)(ii). Section 401(a)(9)(B)(iii) provides that if (I) any portion of the employee's interest in payable to (or for the benefit of) a designated beneficiary, (II) such portion will 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), and (III) such distributions begin not later than one year after the date of the employee's death or such later date as the Secretary may by regulations prescribe, for purposes of clause (ii), the portion referred to in subclause (I) shall be treated as distributed on the date on which such distributions begin

Section 1.401(a)(9)-1, Q&A C-3(a) of the proposed regulations provides as to a non-spouse beneficiary that in order to satisfy the rule in Code section 401(a)(B)(iii) of the Code (the exception to the five-year rule for non- spouse beneficiaries), distributions must commence on or before December 31 of the calendar year immediately following the calendar year in which the employee died. Section 1.401(a)(9)-1, Q&A C-4(c) provides that non-spouse beneficiaries may elect on an individual basis whether the five-year rule in section 401(a)(9)(B)(ii) or the exception to the five-year rule in section 401(a)(9)(B)(iii) of the Code applies to distributions. Such election by a non-spouse beneficiary must be made no later than December 31 of the calendar year following the IRA owner's death in order to

satisfy the requirements for the exception to the five-year rule. 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 spouse.

Section 1.408-8, Q & A A-4(b) of the proposed regulations states, in relevant part, that in the case of an individual dying after December 31, 1983, the only beneficiary of the individual who may elect to treat the beneficiary's entire interest in the trust as the beneficiary's own account is the individual's surviving spouse. If the surviving spouse makes such an election, the surviving spouse's interest in the account then would be subject to the distribution requirements of section 401(a)(9)(A) of the Code rather than those of section 401(a)(9)(B). An election to claim the IRA as the surviving spouse's own will be considered to have been made by the surviving spouse if 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). The result of such an election is that the surviving spouse shall then be considered the individual for whose benefit the trust is maintained.

Generally, if a decedent's IRA proceeds pass through a third party, e.g. a trust, and then are distributed to the decedent's surviving spouse, said spouse will be treated as acquiring them from the third party and not from the decedent. Thus, generally, the surviving spouse will not be eligible to roll over the IRA proceeds into his or her own IRA.

However, if the trustee(s) of a trust which distributes IRA proceeds to a surviving spouse has no discretion with respect to either the allocation of the IRA proceeds to a trust or a subtrust within the trust or to the payment of the IRA proceeds to the surviving spouse, then for purposes of section 408(d)(3) of the Code, the Internal Revenue Service will treat the surviving spouse as having acquired the IRA proceeds from the decedent and not from the trust.

You are the surviving spouse of Decedent. The Trustee intends to fund Trust B and Trust C with cash and other assets, none of which will consist of distributions from the IRA. The Trustee intends to allocate the entire balance of the IRA to Trust A. Because the provisions of paragraph FIRST.B.1(a) limit the amount of Trust C to the unused unified credit exemption equivalent and the provisions of paragraph FIRST.B.1(b) limit the amount of Trust B to the amount of the unused GST exemption, the Trustee has no discretion to allocate the Rollover Amount to Trust B or to Trust C, but must allocate the Rollover Amount to Trust A. Once the Rollover Amount is allocated to Trust A, pursuant to the terms of Trust G, you have the power to demand payment of the Rollover Amount. Thus, the Trustee has no discretion with respect to either the allocation of the Rollover Amount of the IRA proceeds to Trust A or to the payment of the Rollover Amount of the IRA proceeds to you. Therefore, you are treated as having acquired the Rollover Amount from Decedent and not from Trust A.

You will roll over the Rollover Amount of the IRA proceeds into an IRA maintained by you. The rollover will take place within sixty days of the date the distribution was made from Decedent's IRA into Trust A.

Therefore, in regard to your ruling requests, we concluded as follows:

1. You will be treated as the payee or distributee of Individual's A IRA with respect to the Rollover Amount.

2. The Rollover Amount does not represent an inherited IRA within the meaning of section 408(d)(3)(C) of the Code with respect to you.

3. You are eligible to roll over the Rollover Amount into an IRA set up and maintained in her own name pursuant to section 408(d)(3) of the Code as long as the rollover of such distribution occurs no later than 60th day after the date the rollover amount is received by Trust A.

4. You will not be required to include in gross income for federal income tax purposes for the year in which the roll over of the Rollover Amount is timely made (or any prior year) any portion of the Rollover Amount rolled over from Decedent's IRA to the IRA set up and maintained in your name.

This ruling assumes that the IRA either has met or will meet the requirements of Code section 408(a) at all times relevant thereto.

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

This ruling assumes that the distribution from the Decedent's IRA and the proposed rollover will occur no later than December 31, 2001. As a result, it does not include the effect, if any, that the proposed regulations under section 1.401(a)(9)-1 and 1.408-8, published in the Federal Register on January 17, 2001 have on the proposed transaction.

Pursuant to a power of attorney on file with the service, 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
Notice of Intention to Disclose
Copy of Letter to Authorized Representative

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