Internal Revenue Service

Department of the Treasury
Washington, DC 20224 200136030

UICs: 408.00-00
408.03-00

Contact Person:

Telephone Number:

In Reference to:

Date: T:EP:RA:T3

JUN 12 2001

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Taxpayer D:

State E:

Date 1:

Date 2:

Month 3:

IRA W:

IRA X:

IRA Y:

IRA Z:

Trust Y:

Company F:

Company G:

Company H:

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Company I:

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 several letter rulings under section 408(d)(3) of the Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A died on Date 1, 2000 prior to attaining age 70 ½ while a resident of State E. Taxpayer A was survived by his wife, Taxpayer B, and by his son, Taxpayer C and his daughter, Taxpayer D. At his death, Taxpayer A maintained four (4) individual retirement arrangements (IRAs), IRAs W through Z, with Companies F through I, respectively. Your authorized representative asserts that IRAs W through Z meet the requirements of Code section 408(a).

On Date 2, 1999, Taxpayer A executed his last will and testament. Prior to his death, during Month 3, 1999, Taxpayer A named his estate as the beneficiary of his IRAs W through Z. Pursuant to Article III of his last will and testament, Trust Y became the sole residuary beneficiary of the estate of Taxpayer A. As such, Trust Y is entitled to Taxpayer A's IRAs W through Z.

Article III of Taxpayer A's last will and testament provides for the creation of a trust for the benefit of Taxpayer B (Trust Y). The provisions of Trust Y provide, in relevant part, that the trustees thereof shall pay all of the net income of Trust Y to Taxpayer B in monthly or more convenient installments but in no event less than annually so long as she shall live. The provisions of Trust Y also provide that the trustees thereof may appoint Trust Y income or principal to Taxpayer B during her lifetime. Additionally, the provisions of Trust Y provide that distributions from any IRAs held at the death of Taxpayer A shall be made using Taxpayer B's age as the measuring life for calculating minimum required distributions. Furthermore, the provisions of Trust Y provide that minimum required distributions from IRAs shall be made to Trust Y and then paid to Taxpayer B not less than annually.

Article III also provides that Trust Y is intended to qualify for the marital deduction pursuant to Code section 2056(b)(7), and that Trust Y's provisions are intended to permit Taxpayer B to roll over any IRAs maintained by Taxpayer A at his death into her own IRA(s).

Taxpayers B and D are the co-personal representatives of the estate of Taxpayer A. Taxpayers B and C are the co-trustees of Trust Y after Taxpayer A's death.

Your authorized representative has asserted on your behalf that, pursuant to the Statutes of State E, IRAs W through Z may not be used

to pay the expenses and claims of creditors of Taxpayer A's estate. Furthermore, Trust Y bore no estate taxes, claims or administrative expenses arising out of the death of Taxpayer A.

Taxpayers B and C, as co-trustees of Trust Y, intend to withdraw all amounts standing under IRAs W through Z. Pursuant to the terms of Trust Y, Taxpayers B and C, as co-trustees, will then pay said amounts to Taxpayer B. Taxpayer B will then roll over said IRA W through IRA Z assets into one or more IRAs set up and maintained in the name of Taxpayer B. Such rollover(s) will occur no later than the 60th date following the date on which said amounts are distributed from IRAs W through Z to Taxpayers B and C as co-trustees of Trust Y. Additionally, such distributions and rollover(s) will occur no later than December 31, 2001.

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 IRAs W through Z for purposes of Code section 408(d)(3);

2. that IRAs W through Z 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 W through Z into one or more IRAs set up and maintained in her name pursuant to Code section 408(d)(3)(A)(i) as long as the rollover(s) of such distributions occur no later than the 60th day following the day said IRA W through IRA Z proceeds are distributed from said IRAs W through Z; and

4. that Taxpayer B will not be required to include in her gross income for federal income tax purposes for calendar year 2001, the year in which said IRA W through IRA Z distributions will occur and the year in which said rollover(s) will be made, the amounts distributed from said IRAs W through Z and timely rolled over into one or more IRAs 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, are then payable to a trust, and are subsequently 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.

This case presents the issue of whether the facts, as submitted, result in the application of the general rule.

The estate of Taxpayer A is the named beneficiary of his IRAs W through Z. Once the amounts standing under said IRAs are distributed to Taxpayer A's estate, they must be paid to the residuary beneficiary of Taxpayer A's estate, which is Trust Y. The personal representatives of Taxpayer A's estate have no discretion to pay said IRA amounts in any other manner.

Once the amounts held in IRA W through IRA Z are made payable to Trust Y, Taxpayer B, as sole beneficiary of said trust, is entitled to receive income therefrom and, if greater, an amount that will satisfy the minimum required distribution rules found under Code section 401(a)(9) (made applicable to IRAs under Code section 408(a)(6)). Furthermore, pursuant to the provisions of Trust Y, trust principal, including the principal amounts of IRAs W through Z, may be paid to Taxpayer B. Additionally, the provisions of Trust Y reflect Taxpayer A's intent that his spouse, Taxpayer B, be permitted to roll over his IRAs into one or more IRAs in her name after his death. In order to permit Taxpayer B to roll over IRAs W through Z into her own IRA or IRAs, the principal of IRAs W through Z must be paid to Taxpayer B. Thus, Taxpayers B and C, the co-trustees of Trust Y, cannot refuse to pay Taxpayer B the principal of Taxpayer A's IRAs upon her request for said payment. 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 IRAs W through Z for purposes of Code section 408(d)(3);

2. that IRAs W through Z 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 W through Z into one or more IRAs set up and maintained in her name pursuant to Code section 408(d)(3)(A)(i) as long as the rollover(s) of such distributions occur no later than the 60th day following the day said IRA W through IRA Z proceeds are distributed from said IRAs W through Z; and

4. that Taxpayer B will not be required to include in her gross

income for federal income tax purposes for calendar year 2001, the year in which said IRA W through IRA Z distributions will occur and the year in which said rollover(s) will be made, the amounts distributed from said IRAs W through Z and timely rolled over into one or more IRAs set up and maintained in Taxpayer B's name.

This ruling letter is based on the assumption that IRAs W through Z, 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(s), will comply with the requirements of Code section 408(a) at all times relevant thereto. Finally, it assumes that the course of action outlined above will occur no later than December 31, 2001.

This letter ruling does not address issues, if any, that arise under the Proposed Income Tax Regulations issued under Code sections 401(a)(9) and 408 that were published at 2001-11 I.R.B. 865 (March 12, 2001).

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

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