Internal Revenue Service

Department of the Treasury
Washington, DC 20224

200136031

UICs: 408.00-00
408.02-00

Contact Person:

Telephone Number:

In Reference to:
T:EP:RA:T3
Date:

JUN 12 2001

LEGEND:

Taxpayer A:

Taxpayer B:

State C:

Date 1:

Date 2:

Date 3:

Company W:

IRA X:

Court Y:

Trust Z:

Dear Ms. :

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 C. 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).

On Date 2, 1992, Taxpayer A executed his last will and testament. Taxpayer B is the sole personal representative of the estate of Taxpayer A. The estate of Taxpayer A is the named beneficiary of Taxpayer A's IRA X.

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The will of Taxpayer A, in relevant part, created a testamentary trust, Trust Z. Pursuant to the provisions of Trust Z, the trustee thereof shall pay the entire net income of the trust to and for the benefit of Taxpayer B during her lifetime at least quarterly. The trustee of Trust Z is also authorized to pay the principal of Trust Z to Taxpayer B during her lifetime in accordance with the language contained therein. Taxpayer B is the sole trustee of Trust Z.

Pursuant to the provisions of Trust Z, Taxpayer B, as sole personal representative of Taxpayer A's estate, will allocate IRA X to Trust Z. As sole trustee of Trust Z, Taxpayer B will then either distribute IRA X to Taxpayer B as the surviving spouse of Taxpayer A, or cause said IRA X to be transferred, by means of a trustee to trustee transfer, to another individual retirement arrangement set up and maintained in the name of Taxpayer B as surviving spouse of Taxpayer A. If IRA X is distributed to Taxpayer B, she will then roll it over into an IRA set up and maintained in her name. Said rollover will occur no later than the 60th day after the date on which the IRA X proceeds are distributed to Taxpayer B as the sole personal representative of Taxpayer A's estate.

Your authorized representative has submitted a Court Order, dated Date 3, 2001, signed by a Judge of Court Y, which order indicates that the proposed course of action referenced above is consistent with the laws of State C and is consistent with the language of Trust Z.

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 is eligible to either roll over or have transferred, by means of a trustee to trustee transfer, IRA X into an IRA set up and maintained in her name pursuant to Code section 408(d)(3)(A)(i); 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 either the rollover or the trustee to trustee transfer of IRA X to an IRA set up and maintained in the name of Taxpayer B will be made, the amounts rolled over or transferred into said IRA.

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 fact pattern found above results in the application of the general rule.

To begin with, the estate of Taxpayer A is the named beneficiary of his IRA X. Once the amounts standing under said IRA are distributed to Taxpayer A's estate, they will be allocated to the residuary beneficiary of Taxpayer A's estate, which is Trust Z, by Taxpayer B, the sole personal representative of Taxpayer A's estate.

Once allocated to Trust Z, Taxpayer B, as sole trustee thereof, will cause said IRA X assets to either be distributed to Taxpayer B, as the surviving spouse of Taxpayer A, or to be directly transferred, by means of a trustee to trustee transfer, to an IRA set up and maintained in the name of Taxpayer B, the income and principal beneficiary of Trust Z. If distributed, Taxpayer B will then roll over said IRA X assets into an IRA set up and maintained in her name. The documentation which accompanied this ruling request indicates that either of said actions is in compliance with the language of Trust Z and the laws of State C. 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 is eligible to either roll over or have transferred, by means of a trustee to trustee transfer, IRA X into an IRA set up and maintained in her name, pursuant to Code section 408(d)(3)(A)(i); 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 X will either be rolled over or trustee to trustee transferred into an IRA set up and maintained in Taxpayer B's name, the amounts rolled over or transferred into Taxpayer B's IRA.

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 (transferee) IRA, 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 that 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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