DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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403.00-00, 408.02-01

DEC 11 2001

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T:EP:RA:T2

Legend:
Taxpayer A = **********
Taxpayer B = **********
IRA X = **********
Fund O = **********
Company P = **********
Insurance Company M = **********
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Amount 1 = **********
Amount 2 = **********
State E = **********

Dear **********

This letter is in response to a ruling request dated January 31, 2001, submitted on your behalf by your authorized representative, as supplemented by correspondence dated August 31, September 7, and December 5, 2001, in which you request rulings under sections 408 and 403(b) of the Internal Revenue Code.

The following facts and representations have been submitted on your behalf:

Taxpayer A, a resident of State E, whose date of birth was February 4, 1933, died testate on August 2, 2000. Taxpayer A was survived by his wife, Taxpayer B. At the time of his death Taxpayer A had not attained the age of 70 1/2. Pursuant to Taxpayer A's Last Will and Testament ("Will"), Taxpayer B was appointed the sole executrix of Taxpayer A's estate. Under the terms of Taxpayer A's will, after the payment of debts, expenses, and taxes, the residue of his estate passed to Taxpayer B.

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At the time of his death, Taxpayer A owned an individual retirement account (IRA X) maintained by Company P. On July 27, 1999, Taxpayer A designated his estate as the beneficiary of IRA X. The value of IRA X at his death was Amount 1. In addition, at the time of his death, Taxpayer A was also the owner of a retirement annuity account (hereafter Fund O) maintained by Insurance Company M, and his estate was named as the beneficiary of this account on June 7, 1996. The value of Fund O at the time of his death was Amount 2. IRA X was established in accordance with section 408 of the Code; and Fund O was established in accordance with section 403(b)(1) of the Code. There are no contingent beneficiaries named to the foregoing accounts.

Taxpayer A executed his Last Will and Testament on May 23, 2000. Article II of Taxpayer A's Will provides that all the rest, residue and remainder of Taxpayer A's property and estate, both real and personal, is payable to Taxpayer B, his spouse. Under Article V of Taxpayer A's Will, Taxpayer B is nominated as the executrix of Taxpayer A's Will. By Letters Testamentary dated August 23, 2000, State E appointed Taxpayer B as executrix of Taxpayer A's estate.

The custodian of IRA X will permit Taxpayer B, as executrix of Taxpayer A's estate, to transfer the entire value of IRA X directly to an IRA established by Taxpayer B in her own name. Insurance Company M will transfer, in a single sum, the Fund O benefits to Taxpayer A's estate, as the named beneficiary. Insurance Company M will not permit the distribution of the death benefit proceeds to an IRA established by Taxpayer B in her own name. Taxpayer B, as executrix of Taxpayer A's estate, intends make a distribution of the Fund O death benefit proceeds from Taxpayer A's estate to an IRA established by her, in her own name, no later than the sixtieth day after the date on which the Fund O distribution is received by the estate.

Based on the above facts and representations, Taxpayer B requests the following rulings:

1. That the custodian to custodian transfer of the distribution from Taxpayer A's IRA X into an IRA set up and maintained in the name of Taxpayer B satisfies section 408(d)(3) of the Code as a tax-free direct rollover and is not includible in the income of Taxpayer B for federal income tax purposes in the year it is transferred from Taxpayer A's IRA to Taxpayer B's IRA.

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2. That Taxpayer A's IRA X which will be directly transferred to an IRA established and maintained in Taxpayer B's name is not an inherited IRA as that term is defined in section 408(d)(3)(C)(i) of the Code.

3. That pursuant to section 403(b)(8)(A) of the Code, the proceeds of Fund O may be transferred to Taxpayer A's estate, and within 60 days, rolled over by Taxpayer B to an IRA established and maintained in her own name, and that such transfer satisfies section 403(b)(8)(A) as a tax-free rollover.

4. That to the extent that Fund O is rolled over to an IRA established and maintained in the name of Taxpayer B within the time frame specified in section 403(b)(8)(B), the rolled over death benefits will not be includible in Taxpayer B's gross income in the year of in which it is paid to the estate of Taxpayer A.

Section 408(d)(1) the Code 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.

Section 408(d)(3) of the Code provides, in pertinent part, 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).

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 whose benefit the account is maintained if the entire amount received (including money and 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.

Section 408(d)(3)(C)(ii) of the Code provides that an IRA shall be treated as an inherited IRA 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.

Q&A-4 of section 1.408-8 of the Proposed Income Tax Regulations 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) of the Code. Q&A-4 further provides, in

pertinent part, 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-4 of section 1.408-8 of the proposed regulations provides that a surviving spouse may elect to treat an IRA of a deceased spouse as his or her own. Q&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, and are paid to the executrix of the estate who then pays them to the decedent's surviving spouse, 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.

However, the general rule will not apply in a case where the surviving spouse is the sole executrix of the decedent's estate with the sole authority to distribute the assets of the estate and is also the sole beneficiary of the estate.

In this case, Taxpayer B is the sole executrix of Taxpayer A's estate with the sole authority to distribute all of the assets of the estate. Taxpayer B is also the sole beneficiary of Taxpayer A's estate. Taxpayer B is entitled, under the provisions of Taxpayer A's Will, as sole beneficiary of Taxpayer A's estate, to all the rest, residue and remainder of Taxpayer A's estate, both real and personal. As executrix of Taxpayer A's estate, Taxpayer B will direct the custodian of IRA X to transfer the balance remaining in IRA X (Amount 1 as of the date of this ruling request) directly from Taxpayer A's IRA X to an IRA set up and maintained in Taxpayer B's name.

Based on the above facts and representations, the Service will not apply the general above mentioned rule in this case. As a result, Taxpayer B will be treated as receiving the balance remaining in IRA X directly from Taxpayer A and not from the estate of Taxpayer A. Since Taxpayer B is to be treated as having received the IRA X proceeds from Taxpayer A, and she accordingly, is to be treated as the payee and beneficiary of IRA X for purposes of Code sections 408(d)(1) and 408(d)(3).

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Therefore, with respect to your first and second ruling requests, we conclude that the custodian to custodian transfer of the distribution from Taxpayer A's IRA X into an IRA set up and maintained in the name of Taxpayer B satisfies section 408(d)(3) of the Code as a tax-free direct rollover and is not includible in the income of Taxpayer B for federal income tax purposes in the year it is transferred from Taxpayer A's IRA X to an IRA set up and maintained in Taxpayer B's name, and that Taxpayer A's IRA X which will be directly transferred to a IRA established and maintained in Taxpayer B's name is not an inherited IRA as that term is defined in section 408(d)(3)(C)(i) of the Code.

Regarding ruling requests number three and four, section 402(a)(1) of the Code provides, in general, that any amount actually distributed to any distributee by any employee's trust described in Code section 401(a) which is exempt from tax under Code section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under Code section 72 (relating to annuities).

Section 402(c)(1) of the Code provides, generally, that if any portion of an eligible rollover distribution from a qualified trust is transferred into an eligible retirement plan, the portion of the distribution so transferred shall not be includible in gross income in the taxable year in which paid.

Section 402(c)(2) of the Code provides that the maximum amount of a eligible rollover distribution to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)).

Section 402(c)(3) of the Code provides that section 402(c)(1) shall not apply to any transfer of a distribution made after the 60th day following the day which the distributee received the property distributed.

Section 402(c)(4) of the Code defined "eligible rollover distribution" as any distribution to an employee of all or a portion of the balance to the credit of an employee in a qualified trust; except that the term shall not include--

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made--

(i) for the life (or life expectancies or the joint life expectancies) of the employee and the employee's designated beneficiary, or

(ii) for a period of 10 years or more, and

(B) any distribution to the extent the distribution is required under section 401(a)(9).

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Section 402(c)(8)(B) of the Code defines eligible retirement plan as (i) an individual retirement account described in section 408(a), (ii) an individual retirement annuity described in section 408(b) (other than en endowment contract), (iii) a section 401(a) qualified retirement plan, and (iv) an annuity plan described in section 403(a).

Section 1.402(c)-2 of the income Tax Regulations, Q&A 7(b), provides, generally, that any amount that is paid from a qualified plan before January 1 of the year in which the employee attains (or would have attained) age 70-1/2 will not be treated as required under section 401(a)(9) and, thus, is an eligible rollover distribution, if it otherwise qualifies.

Section 402(c)(9) of the Code provides that if a distribution attributable to an employee is paid to the spouse of the employee after the employee's death, section 402(c) of the Code will apply to such distribution in the same manner as if the spouse were the employee except that the spouse shall transfer such distribution only to a section 408(a) individual retirement account or a section 408(b) individual retirement annuity. Thus, a distribution to the surviving spouse of an employee is an eligible rollover distribution it if meets the applicable requirements of sections 402(c)(2 and (4) and the associated regulations.

Section 403(b)(8)(A) of the Code provides, in relevant part, that if any portion of the balance to the credit of an employee in an annuity contract described in section 403(b)(1) of the Code is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)), the employee transfers any portion of the property he receives in such distribution to an individual retirement plan or to an annuity contract described in section 403(b)(1) of the Code, then such distribution (to the extent so transferred) will not be includible in the gross income of the employee in the taxable year that the distribution is paid.

Section 403(b)(8)(B) of the Code provides, that rules similar to rules of paragraphs (2) through (7) of section 402(c) shall apply for purposes of 403(b)(8)(A).

Section 403(b)(10) provides, in relevant part, that rules similar to rules of Code sections 401(a)(9) and 401(a)(31) apply to annuities described in Code section 403(b).

Section 1.403(b)-2 of the regulations, Q&A-1, provides, in summary, that an eligible rollover distribution received from a Code section 403(b) annuity may be rolled over into an IRA . Section 1.403(b)-2 of the regulations, Q&A-1, further provides, in part, that the rules with respect to rollovers in sections 402(c)(1), (c)(3) and (c)(9) also apply to eligible rollover distributions from section 403(b) annuities.

As a general rule, if a decedent's qualified plan assets pass through a third party, e.g., an estate or 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, the

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surviving spouse will not be eligible to roll over the qualified plan proceeds into his/her own IRA.

In this case, Taxpayer A's estate is the beneficiary of Taxpayer A's interest in Fund O. As executrix of Taxpayer A's estate, Taxpayer B has the authority to dispose of the assets of Taxpayer A's estate. Under the provisions of Taxpayer A's Will, Taxpayer B is the sole beneficiary of Taxpayer A's estate. Therefore, in view of Taxpayer B's authorized control under the provisions of Taxpayer A's Will of Taxpayer A's estate, and in view of her status as sole beneficiary of Taxpayer A's estate, the general rule will not apply.

Based on the facts as above stated, the Service will not apply the general rule referenced herein and will treat Taxpayer B, Taxpayer A's surviving spouse, as having received Taxpayer A's Fund O from Taxpayer A and not from Taxpayer A's estate.

Taxpayer B, as executrix and sole beneficiary of Taxpayer A's estate, intends to exercise her right as beneficiary of Fund O by making a distribution, to her, of the Fund O proceeds after such funds have been distributed by Company P to Taxpayer A's estate. Taxpayer B then intends to roll over the Fund O proceeds to an IRA established in her own name no later than the 60th day after the date on which the Fund O distribution is received by Taxpayer A's estate.

Therefore, with respect to ruling requests three and four, we conclude that pursuant to section 403(b)(8)(A) of the Code, the proceeds of Fund O may be distributed by Company P to Taxpayer A's estate and further, if within 60 days after the distribution of the Fund O proceeds to Taxpayer A's estate, Taxpayer B rolls over such amounts to an IRA established and maintained in her own name, such distribution (to the extent transferred) will qualify as a tax-free rollover. In addition, we conclude, that, to the extent that the proceeds of Fund O are rolled over to an IRA established and maintained by Taxpayer B in her own name within the time frame specified in section 403(b)(8)(B) of the Code, the rolled over amounts will not be includible in Taxpayer B's gross income in the year in which such amounts are transferred.

This ruling letter assumes that Taxpayer A's IRA X satisfies the requirements of section 408 of the Code and that the Fund O account satisfies the requirements of section 403(b) at all relevant times. In addition, it also assumes that the rollover of the distribution from Taxpayer A's Fund O account to Taxpayer B's IRA will take place in a timely fashion. Further, it assumes that the IRA(s) set up and maintained in the name of Taxpayer B, will meet the requirements of section 408 of the Code at all times relevant to the proposed transactions.

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These rulings are directed only to the taxpayer who requested them. Section 6110(k)(3) of the Code provides that they may not be used or cited by others as precedent.

In accordance with a power of attorney on file in this office, a copy of this ruling is being sent to your authorized representative.

If additional information is needed, please contact T:EP:RA:T:2********** **********.

Sincerely yours,

(signed) JOYCE E. FLOYD
Joyce E. Floyd, Manager,
Employee Plans Technical Group 2
Tax Exempt and Government Entities Division

Enclosures:
Deleted Letter & Notice 437