TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200236052

UIL 401.06-00 JUN 18 2002

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Company M:

IRA T:

State S:

This is in response to the February 15, 2002, request for letter rulings under section 408(d) of the Internal Revenue Code submitted on your behalf by your authorized representative. The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was , died on Taxpayer A was survived by his wife, Taxpayer B, whose date of birth was .. Pursuant to the will of Taxpayer A, Taxpayer B was named the sole residuary beneficiary and sole executrix of Taxpayer A's estate.

At his death, Taxpayer A maintained IRA T with Company M. The estate of Taxpayer A was the beneficiary of IRA T. He was 77 years of age and had therefore reached the required beginning date for distributions from individual retirement accounts (IRA). Prior to his death he was receiving the distributions required under section 401(a)(9) of the Code. A 2001 required distribution of $) was taken from IRA T based on Taxpayer A's life expectancy in the year of his death.

Taxpayer B, as executor of Taxpayer A's estate, will receive a distribution of IRA T in 2002. As executor of the estate she will then pay the proceeds of IRA T to herself as residuary beneficiary of the estate. It is her intention to roll over said distribution into one or more IRAs set up and maintained in her name. At all times subsequent to Taxpayer A's death, IRA T has been maintained in the name of the deceased.

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

1. IRA T will not be treated as an inherited IRA within the meaning of section 408(d) of the Code with respect to Taxpayer B.

2. Taxpayer B is eligible to rollover IRA T into an IRA set up and maintained in her own name as long as the rollover of such distribution occurs no later than the 60th day from the date said distribution is received by Taxpayer B as executor of Taxpayer A's estate.

3. Taxpayer B will not be required to include in gross income for federal income tax purposes for the year in which the distribution of IRA T and subsequent rollover is made pursuant to the second ruling any portion of the amounts rolled over from IRA T to the IRA set up and maintained in Taxpayer B's name.

With respect to your ruling requests, 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.

On March 12, 2001, Revised Proposed Income Tax Regulations under Code sections 401(a)(9) and 408(a)(6) were published in the Internal Revenue Bulletin at 2001-11 I.R.B. 865 ("New" Proposed Regulations). The "New" Proposed Regulations may be used with respect to transactions which occur during the 2002 calendar year.

Section 1.408-8 of the "New" Proposed Regulations, Question and Answer-5, 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-5 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 surviving spouse as beneficiary 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.

Section 1.408-8 of the "New" Proposed Regulations, Q&A-5(a), further provides, in relevant part, that a surviving spouse may make an election to treat the IRA of a deceased individual as her own only if she is the sole beneficiary of the IRA and has an unlimited right to withdraw amounts from the IRA. A spouse may not treat an IRA as her own if a trust is the beneficiary of the IRA and she is a (or sole) beneficiary of the trust.

Although the "New" Proposed Regulations are silent regarding the issue presented in this case, the regulations are not intended to permit a surviving spouse who is the residuary beneficiary of an estate which estate is the beneficiary of an IRA to treat the IRA as her own. However, the "New" Proposed Regulations do not preclude such surviving spouse from rolling amounts distributed from an IRA of a decedent into an IRA in her own name if the surviving spouse is the distributee of said amounts.

With respect to your ruling requests, Taxpayer A's estate was the named beneficiary of Taxpayer A's IRA T. Taxpayer B was the sole residuary beneficiary of Taxpayer A's estate and the sole executrix of Taxpayer A's estate.

As a general rule, if amounts are distributed from an IRA to the estate of a deceased IRA holder and subsequently paid to the spouse as the beneficiary of said estate, the spouse shall be treated as having received the IRA proceeds from the estate and not directly from the IRA. In such a case, the surviving spouse will not be eligible to either roll over the IRA proceeds into an IRA set up and maintained in her name or treat said IRA as her own IRA.

However, in this case, since Taxpayer B, the surviving spouse of Taxpayer A, is the sole executrix of Taxpayer A's estate with authority to allocate assets in Taxpayer A's estate to the beneficiaries and is also the sole residuary beneficiary of said estate, to whom she, as executrix, paid the proceeds of IRA T, the Service will not apply the general rule. In effect, Taxpayer B will be treated as though she received the IRA proceeds directly from IRA T rather than from the estate. Thus, Taxpayer B will be treated as the distributee of said amounts.

Thus, with respect to your three ruling requests, the Service concludes as follows:

1. IRA T will not be treated as an inherited IRA within the meaning of section 408(d) of the Code with respect to Taxpayer B.

2. Taxpayer B is eligible to roll over IRA T into an IRA set up and maintained in her own name as long as the rollover of such distribution occurs no later than the 60th day from the date said distribution is received by Taxpayer B as executor of Taxpayer A's estate.

3. Taxpayer B will not be required to include in gross income for federal income tax purposes for the year in which the distribution of IRA T and subsequent rollover is made pursuant to the second ruling any portion of the amounts rolled over from IRA T to the IRA set up and maintained in Taxpayer B's name.

This ruling letter assumes that Taxpayer A's IRA T had met the requirements of Code section 408(a) at all times relevant thereto. It also assumes that Taxpayer B's IRA meets the requirements of Code section 408(a) at all times relevant thereto.

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.

This letter ruling was written by of this Group who can be reached at .

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