200317032

T:EP:RA:T4

UICs: 408.00-00, 408.03-00

NOV 2 2 2002

Legend:

Taxpayer A =

Taxpayer B =

Company M =

IRA T =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter is in response to your request for private letter rulings, submitted on your behalf by your authorized representative, dated , in which you request a series of letter rulings under section 408(d) of the Internal Revenue Code (the Code).

Your representative has submitted the following facts and representations:

Taxpayer A, was born on Date 1, 1927, and died on Date 2, 2001. Taxpayer A was survived by Taxpayer B.

At the date of his death, Taxpayer A maintained an Individual Retirement Arrangement, IRA T, with Company M. Taxpayer A did not designate a beneficiary for IRA T. The default provisions of IRA T provide that Taxpayer A's estate is the beneficiary.

Pursuant to the will of Taxpayer A, Taxpayer B was named the sole executor of Taxpayer A's estate. On or about Date 3, 2002, Taxpayer B was appointed to act as the executor of the estate of Taxpayer A.

The provisions of Taxpayer A's will provided, in relevant part, that after payment of Taxpayer A's debts and funeral expenses, the remainder of Taxpayer A's estate was to go to Taxpayer B if she survived him. Otherwise, the remainder of the estate went to the children of Taxpayer A and Taxpayer B.

Taxpayer B, in her capacity as sole executor of Taxpayer A's estate, intends to receive the proceeds of Taxpayer A's IRA T, and then distribute those proceeds to herself, in accordance with the terms of Taxpayer A's will. After receipt of those IRA proceeds, Taxpayer B intends to rollover those proceeds into her IRA, within 60 days of receipt of such proceeds.

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

1. That Taxpayer B will be treated as the payee or distributee of Taxpayer A's IRA T proceeds for purposes of section 408(d)(3) of the Code;

2. That Taxpayer A's IRA T will not be treated as an inherited IRA within the meaning of section 408(d)(3) of the Code with respect to Taxpayer B;

3. That Taxpayer B will be eligible to rollover the distribution of the proceeds from Taxpayer A's IRA T into one or more IRA accounts set-up and maintained in her name, pursuant to section 408(d)(3)(A)(I) of the Code, as long as the rollover of these IRA proceeds is done within 60 days from the date these IRA proceeds were distributed to Taxpayer B; and,

4. That Taxpayer B will not be required to include in her gross income for the year in which the distribution of IRA proceeds from Taxpayer A's IRA T occurs the amount of IRA proceeds distributed to Taxpayer A's estate and then distributed to Taxpayer B, and then timely rolled over into one or more IRA accounts set-up and maintained in Taxpayer B's name.

With respect to your ruling requests, section 408(d)(1) of the Code provides that, except as otherwise provided in that subsection, any amounts 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 of the Code.

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 subsections 408(d)(3)(A) and 408(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 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.

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 no 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.

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 he 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.

Section 1.408-8 of the Income Tax Regulations, Q&AA-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) of the Code 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 section1.408-8 of the Income Tax 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, and are paid to the executor of the estate who then pays them to a decedent's surviving spouse as the beneficiary of the estate, said surviving spouse shall be treated as having received the IRA proceeds from the estate and not from the decedent. Accordingly, such a surviving spouse, generally, shall not be eligible to rollover (or have transferred) said distributee IRA proceeds into his/her own IRA.

However, the general rule will not apply in a case where the surviving spouse is the sole executor of the decedent's estate who pays the IRA proceeds to the surviving spouse, in order to satisfy the residuary bequest under the decedent's will, and which surviving spouse then receives the IRA proceeds and transfers them into an IRA set-up and maintained in his/her name.

In this case, Taxpayer B is the sole executrix of the estate of Taxpayer A who, pursuant to the terms of Taxpayer A's will, shall allocate the proceeds of IRA T to Taxpayer A's residuary estate. Taxpayer B is the sole residuary beneficiary under Taxpayer A's will. As part of Taxpayer B's residuary bequest under Taxpayer A's will, the proceeds from IRA T are to be transferred into Taxpayer A's estate and then will be distributed to Taxpayer B. Taxpayer B, within 60 days of receipt of these proceeds from IRA T, will rollover these proceeds from IRA T into her IRA account. Under this set of facts, the Internal Revenue Service will not apply the general rule set forth above.

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

1. That for purposes of section 408(d)(3) of the Code, Taxpayer B will be treated as the payee or distributee of Taxpayer A's IRA T proceeds;

2. That with respect to Taxpayer B, Taxpayer A's IRA T is not an inherited IRA within the meaning of section 408(d)(3) of the Code;

3. That Taxpayer B will be eligible to rollover the distribution of the proceeds from Taxpayer A's IRA T into one or more IRA accounts set-up and maintained in her name, pursuant to section 408(d)(3)(A)(I) of the Code, as long as and only if the rollover or transfer of these

proceeds from Taxpayer A's IRA T is completed within 60 days from the date these proceeds were distributed to Taxpayer B; and,

5. That Taxpayer B will not be required to include in her gross income for the year in which the proceeds from Taxpayer A's IRA T are distributed to her the amount of the proceeds from IRA T distributed to Taxpayer A's estate and then distributed to Taxpayer B, and then timely rolled over or transferred into one or more IRA accounts set-up and maintained in Taxpayer B's name.

This ruling is based on the assumption that Taxpayer A's IRA T met the requirements of section 408(a) of the Code at all times relevant thereto. It also assumes that Taxpayer B's IRA account or accounts will meet the requirements of section 408(a) of the Code at the time the IRA T proceeds received by Taxpayer B are rolled over or transferred to those IRA account or accounts.

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.

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

Sincerely yours,

Alan Pipkin

Alan Pipkin, Manager
Employee Plans Technical Group 4

Enclosures:
Deleted Copy of Letter
Notice 437

cc: