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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.00-00

Date: AUG 21 2003

T:EP:RA:T3

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Legend:
Taxpayer A: * * *
Taxpayer B: * * *
Date 1: * * *
Date 2: * * *
Date 3: * * *
Date 4: * * *
Company W: * * *
Trust Y: * * *
Amount Z: * * *
T Percent: * * *

Dear Applicant:

This is in response to a letter ruling request dated Date 1 submitted on your behalf by your authorized representative under section 408(d)(3) of the Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 2, died on Date 3, prior to attaining age 70-1/2. Taxpayer A was survivied by his spouse, Taxpayer B. At his death, Taxpayer A maintained an individual retirement account ("IRA") with Company W.

Prior to his death, Taxpayer A named a trust, Trust Y ("Trust"), which was created on Date 4, as the beneficiary of his IRA. Under the terms of Trust Y, Taxpayer B became the sole trustee of Trust Y upon Taxpayer A's death.

Paragraph V of the Trust provides, in pertinent part, that upon Taxpayer A's death, the Trustee shall divide the Trust Estate, including all property received, into two (2) parts, each part to be administered as a separate Trust to be known repectively as the "Survivor's Trust" and "Decedent's Trust."

Paragraph VI of the Trust provides, in pertinent part, that all the net income from the Survivor's Trust shall be distributed to Taxpayer B during her lifetime. In addition, during Taxpayer B's lifetime, she shall have a general power to appoint the principal and any income of the Survivor's Trust or any part thereof, to herself. Upon the death of Taxpayer B, she shall have the general power to appoint the principal and any undistributed income of the Survivor's Trust or any part thereof to her estate or any person or persons, or to the Decedent's Trust.

Any remaining unappointed property is to be held in further trust for the benefit of Taxpayer A's issue.

Paragraph VII of the Trust provides that all the net income from the Decedent's Trust shall be distributed to Taxpayer B during her lifetime. Taxpayer B shall receive as much of the principal as the Trustee in its sole discretion deems necessary to provide for her support. In addition, during Taxpayer B's lifetime, she shall have the noncumulative right to appoint the principal and any undistributed income of the Decedent's Trust to herself or to any person or persons only to the extent of the greater of Amount Z dollars or T Percent of the aggregate value of the Trust Estate. Upon the death of Taxpayer B, any remaining trust property shall be part of the Trust for Taxpayer A's issue.

Paragraph V(C) of the Trust provides that in the event property is received by the Trustee, either by Inter Vivos or Testamentary Transfer, and directions are contained in the Instrument of Transfer for allocation to or between the Survivor's Trust and the Decedent's Trust, then the Trustee shall make allocation in accordance with such directions, anything to the contrary notwithstanding. In the event no specific instructions are given as to allocation, such property as is received from a source other than the Trustors (or either of them), shall be placed in the Survivor's Trust.

Based upon the beneficiary designation of the IRA and the language in the Trust requiring that the IRA be allocated to the Survivor's Trust, all of the assets of the IRA shall fund the Survivor's Trust. The Trustees have fully funded the Decedent's Trust with other assets.

Taxpayer B intends, pursuant to subparagraph VI(B) of the Trust, to appoint all of the assets of the Decedent's IRA funding the Survivor's Trust to herself. Taxpayer B then intends to transfer such assets into an IRA maintained in her own name. Said actions will occur no later than December 31, 2003.

Based on the above facts and representations, you, through your authorized representative, request a letter ruling that you will not be required to include in your gross income for federal tax purposes proceeds which will be distributed from the Decedent's IRA to the Trust, subsequently allocated to Survivor's Trust, subsequently appointed by and paid to you as Taxpayer B, and finally transferred into an individual retirement account maintained in your own name within sixty days of the date of distribution from the Decedent's IRA in the year such assets will be distributed to you.

Section 408(d)(1) of 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 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 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 individual retirement account 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 individual retirement account (other than an endowment contract) for

the benefit of such individual not later than the 60th day after the day on which he or she receives the payment of distribution.

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any transfer described in subparagraph 408(d)(3)(A)(i) if at any time during the 1 year period ending on the day of such receipt such individual received any other amount described in that subparagraph from an individual retirement account or an individual retirement annuity which was not includible in his or her gross income because of the application of section 408(d)(3).

Section 408(d)(3)(C)(i) of the Code provides that in the case of an inherited individual retirement account, section 408(d)(3) shall not apply to any amount received by an individual from such an account (and no amount transferred from such account to another individual retirement account shall be excluded from gross income by reason of such transfer), and such inherited account shall not be treated as an individual retirement account for purposes of determining whether any other amount is a rollover contribution.

Section 408(d)(3)(C)(ii) of the Code provides that an individual retirement account shall be treated as inherited if the individual for whose benefit the account or annuity 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.

Section 1.408-8 Q&A A-5(a) of the Final and Temporary Regulations (See 67 Federal Register 18988 (April 17, 2002)), provides in relevant part, that the surviving spouse of an individual may elect to treat the spouse's entire interest as a beneficiary in an individual's IRA (or the remaining part of such interest if distribution thereof has commenced to the spouse) as the spouse's own IRA. This election is permitted to be made at any time after the individual's date of death. If the surviving spouse makes such an election, the required minimum distribution for the calendar year of the election and each subsequent calendar year is determined under section 401(a)(9)(A) of the Code with the spouse as the IRA owner and not section 401(a)(9)(B) with the surviving spouse as the deceased IRA owner's beneficiary.

Section 1.408 Q&A A-5(c) of the Final and Temporary Regulations provides that if the surviving spouse makes such an election, the surviving spouse shall then be considered the IRA owner for whose benefit the trust is maintained for purposes under the Code.

Section 1.408-8 Q&A A-5(a) of the Final and Temporary Regulations provides in relevant part, that in order to make this election, the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the spouse is the sole beneficiary of the trust.

The Preamble to the Final Regulations under section 1.408-8 provides, in relevant part, that a surviving spouse who actually receives a distribution from an IRA is permitted to roll that distribution over into his or her own IRA even if the spouse is not the sole beneficiary of the deceased's IRA as long as the rollover is accomplished within the requisite 60 day period. A rollover may be accomplished even if IRA assets pass through either a trust or an estate.

Generally, if the proceeds of a decedent's IRA are payable to a trust, and are 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.

However, the general rule will not apply in a case where the surviving spouse is the sole trustee of the decedent's trust who pays the IRA proceeds to herself pursuant to the terms of the trust which provide that the trust estate is to be paid to said surviving spouse outright and free of trust upon the demand of the surviving spouse, which surviving spouse then receives the IRA proceeds and rolls them into an IRA set up and maintained in her name.

In this case, Taxpayer B is the sole trustee of the Trust, which upon the death of Taxpayer A, was divided by the Trustee into two parts, Survivor's Trust and Decedent's Trust. Pursuant to the terms of the Trust and the designation of beneficiary form, all of Taxpayer A's IRA is to be allocated to Survivor's Trust. Taxpayer B intends to exercise her right to appoint all of the assets of the Decedent's IRA to herself. Taxpayer B will then roll over the IRA proceeds to an IRA set up and maintained in her own the name. Said rollover will occur within 60 days of the date on which the IRA proceeds are distributed from the Decedent's IRA. 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:

> Taxpayer B will not be required to include in income for federal tax purposes proceeds which will be distributed from the Decedent's IRA to Trust Y, subsequently allocated to Survivor's Trust, subsequently appointed by and paid to her as the Decedent's surviving spouse, and finally transferred into an individual retirement account maintained in her name within sixty days of the date of distribution from the Decedent's IRA, in the year such assets will be distributed to her.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations that may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

This letter ruling assumes that all of the IRAs referenced herein will meet the requirements of Code section 408 (to the extent applicable) at all times relevant thereto.

Sincerely,

Frances V. Sloan

Frances V. Sloan
Manager, Employee Plans
Technical Group 3