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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Index Nos: 408.00-00
408.03-00

Person to Contact:

Telephone Number:

Refer Reply to:
OP:E:EP:T:3

Date:
JUL 2 1999

LEGEND:

Taxpayer A:

Taxpayer B:

State C:

IRA 1:

Date 1:

Date 2:

Date 3:

Date 4:

Company G:

Trust X:

Dear Mrs. :

This is in response to the , letter, submitted by your authorized representative on your behalf, in which you request several private letter rulings 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 1, died on Date 2 not having attained age 70 1/2. Taxpayer A was survived by his wife, Taxpayer B, who was named by Taxpayer A as the sole executrix of his estate.

At the time of his death, Taxpayer A was the owner of an individual retirement arrangement, IRA 1, maintained in his name with Company G. On Date 3, Taxpayer A named his estate as the beneficiary of his IRA 1.

On Date 4, Taxpayer A executed his last will and testament. Taxpayer B was named the sole executrix of Taxpayer A's estate.

Article Third of Taxpayer A's will created Trust X. Article Fourth of Taxpayer A's will provides that the rest, residue and remainder of Taxpayer A's property and estate, real and personal, is payable to Taxpayer B.

As executrix of Taxpayer A's estate, Taxpayer B intends to satisfy the bequest to Trust X with assets other than IRA 1. She will satisfy the residuary bequest under Taxpayer A's will, in part, with IRA 1. As executrix of Taxpayer A's estate, Taxpayer B will pay IRA 1 to herself as beneficiary of said residuary bequest in a single sum. Upon receipt of the IRA 1 distribution, Taxpayer B will roll over said distribution into an IRA set up and maintained in her name. Said rollover will take place no later than the 60th day after the date on which the IRA 1 distribution is received by Taxpayer B.

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

(1) That the rollover of the distribution from IRA 1 into an IRA set up and maintained in the name of Taxpayer B satisfies Code section 408(d)(3);

(2) That IRA 1 is not an inherited IRA as that term is defined in Code section 408(d)(3)(C)(i); and

(3) To the extent that the IRA 1 distribution is rolled over to an IRA set up and maintained in the name of Taxpayer B within the time frame specified in Code section 408(d)(3), the rolled over amounts will not be includable in Taxpayer B's gross income either for the year in which distributed from IRA 1 or for the year in which the IRA 1 distribution is received by Taxpayer B.

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 [illegible] withdrawn 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-6 of section 1.408-8 of the proposed regulations provides that if a surviving spouse of an employee rolls over a distribution from a qualified plan, such surviving spouse may elect to treat the IRA as the spouse's own IRA in accordance with the provisions in A-4.

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 distributed to the executrix of the estate, and then are distributed by the executrix to the decedent's surviving spouse, beneficiary of the residuary bequest under the decedent's will, said surviving spouse shall be treated as having received the IRA proceeds from the estate and not from the decedent. Accordingly, such surviving spouse shall, generally, not be eligible to roll over said distributed IRA proceeds into her own IRA.

However, in a case where a surviving spouse is the sole executrix of the decedent's estate with the authority to allocate estate property between and among bequests under a decedent's will, the surviving spouse, as executrix, allocates a decedents IRA to the residuary bequest under his will, and the surviving spouse is the sole beneficiary of said residuary bequest, the surviving spouse will be treated as having received the IRA proceeds from the decedent and not from his estate.

Thus, under the facts stated above, Taxpayer B is to be treated as having received the IRA 1 proceeds from Taxpayer A, and accordingly is to be treated as the payee and beneficiary of IRA 1 for purposes of Code sections 408(d)(1) and 408(d)(3).

Therefore, with respect to your ruling requests, we conclude as follows:

(1) That the rollover of the distribution from IRA 1 into an IRA set up and maintained in the name of Taxpayer B satisfies Code section 408(d)(3);

(2) That IRA 1 is not an inherited IRA as that term is defined in Code section 408(d)(3)(C)(i); and

(3) To the extent that the IRA 1 distribution is rolled over to an IRA set up and maintained in the name of Taxpayer B within the time frame specified in Code section 408(d)(3), said rolled over amounts will not be included in Taxpayer B's gross income either for the year in which distributed from IRA 1 or for the year in which the IRA 1 distribution is received by Taxpayer B.

This ruling letter assumes that IRA 1 either is or was qualified under Code section 408(a) at all times relevant thereto. It also assumes that the rollover IRA to be set up by Taxpayer B will also meet the requirements of Code section 408(a) at all times relevant thereto. Finally, it assumes that Taxpayer B's rollover of the IRA 1 distribution will be made within the time frame referenced in Code section 408(d)(3)(A)(i).

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.

Pursuant to a power of attorney on file in this office, copies of this letter ruling are being sent to your authorized representative(s).

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Chief, Employee Plans
Technical Branch 3

Enclosures:

Deleted copy of letter ruling
Form 437

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