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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

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

Date: AUG 5 1999

LEGEND:

Taxpayer A:

Taxpayer B:

Trust C:

Subtrust D:

Subtrust E:

Date 1:

Date 2:

Date 3:

Date 4:

IRA X:

Dear

This is in response to your , request for letter rulings, as supplemented by correspondence dated and , in which you request several 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 survived by his spouse, Taxpayer B. Taxpayer B's date of birth was Date 3. Taxpayer B attained age 70 1/2 on Date 4, 1999.

At his death, Taxpayer A owned IRA X and had named Trust C as the beneficiary thereof. Taxpayer B became the trustee of Trust C at the death of Taxpayer A.

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Article IIIC.1 of Trust C, in summary, provides that if Taxpayer B survives Taxpayer A, Trust C is to be divided into Subtrusts D and E. Trust C, in pertinent part, gives the trustee of Trust C the power to allocate Trust C assets between Subtrusts D and E.

Articles IIIC.1.a. and IIIC.3 of Trust C govern Subtrust D. Said Articles, in pertinent part, provide that the trustee of Trust C shall pay to, or apply for the benefit of Taxpayer B, all of the net income of Subtrust D at least annually. Said Articles also provide that the Trust C trustee shall pay to, or apply for the benefit of Taxpayer B, such sums of Subtrust D principal as Taxpayer B, Taxpayer A's spouse, requests in writing without limitation.

Taxpayer B, as the trustee of Trust C, intends to allocate IRA X to Subtrust D. Subsequently, Taxpayer B, as Taxpayer A's surviving spouse, intends to demand payment of the full amount remaining in IRA X. Taxpayer B then intends to roll over the IRA X balance into an individual retirement arrangement (IRA) set up and maintained in her name. Said rollover will occur no later than the 60th day following the date on which the IRA X balance is received by Trust C. Said IRA X distribution and rollover will occur no later than December 31, 1999. Taxpayer B will then name her children, ages 47 and 40, as beneficiaries of her rollover IRA.

As of the date of this request for letter ruling, no distributions have been made from IRA X with respect to calendar year 1999.

Based on the above facts and representations, you request the following letter rulings:

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

(2) to the extent that the IRA X distribution is timely rolled over into an IRA set up and maintained in the name of Taxpayer B, said rolled over amount will not be included in Taxpayer B's gross income for the year in which rolled over;

(3) that, if Taxpayer B rolls over the IRA X distribution into her IRA no later than December 31, 1999, she may designate a beneficiary of her rollover IRA no later than December 31, 2000; and

(4) that, if Taxpayer B rolls over the IRA X distribution into her IRA no later than December 31, 1999, she is not required to receive distributions from her rollover IRA until December 31, 2000.

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

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-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.

Section 4974 of the Code provides, in part, that if the amount distributed during the taxable year of the payee under any qualified retirement plan or any eligible deferred compensation plan (as defined in section 457(b)) is less than the minimum required distribution for such taxable year, there is hereby imposed a tax equal to 50 percent of the amount by which such minimum required distribution exceeds the actual amount distributed during the taxable year.

With specific reference to your first two ruling requests, generally, if the proceeds of a decedent's IRA are payable to a trust, are made payable to the trustee of the trust, are allocated to a subtrust of the trust, and then are to be transferred by direction of the trustee to an IRA set up and maintained in the name of the decedent's surviving spouse, beneficiary of the subtrust, said surviving spouse shall be treated as having received the IRA proceeds from the trust and not from the decedent.

Accordingly, such surviving spouse shall, generally, not be eligible to roll over (or have transferred) said distributed IRA proceeds into her own IRA.

However, in a case where a surviving spouse is the sole trustee of the trust with the power to allocate trust assets between two subtrusts, said surviving spouse, as trustee, allocates assets remaining in her deceased husband's IRA to a subtrust of which the surviving spouse has the power to demand payment of principal, said surviving spouse demands payment of principal and, within 60 days of the date the IRA assets are distributed to the trust, rolls over the IRA, the surviving spouse will be treated as having received the IRA proceeds from the decedent and not from his trust.

Thus, under the facts stated above, Taxpayer B is to be treated as having received the IRA X proceeds from Taxpayer A and, 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).

Thus, with respect to your first two ruling requests, we conclude as follows:

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

(2) to the extent that the IRA X distribution is timely rolled over into an IRA set up and maintained in the name of Taxpayer B, said rolled over amount will not be included in Taxpayer B's gross income for the year in which rolled over.

With respect to your third and fourth ruling requests, in general, a surviving spouse, situated as is Taxpayer B, who rolls over a distribution received from the IRA of her deceased husband into her own IRA is treated as having an account balance for purposes of Code section 401(a)(9) and the required distribution rules as of the last date of the calendar year during which the rollover is accomplished. Thus, required distributions from said rollover IRA must commence no later than the end of the calendar year immediately following the calendar year of rollover.

In this case, Taxpayer B intends to accomplish her rollover during the 1999 calendar year. Thus, she will have an account balance for purposes of the required distribution rules as of December 31, 1999. In accordance with the rule given above, Taxpayer B must begin to receive required distributions from her rollover IRA no later than December

31, 2000. Furthermore, if Taxpayer B intends to receive required distributions over the joint life expectancy of a designated beneficiary and herself, she must designate her beneficiary no later than December 31, 2000. Finally, if Taxpayer B names her two children as beneficiaries of her IRA, the life expectancy of the older beneficiary, which is the shortest life expectancy, must be used in calculating minimum required distributions.

Thus, with respect to your third and fourth ruling requests, we conclude as follows:

(3) that, if Taxpayer B rolls over the IRA X distribution into her IRA no later than December 31, 1999, she may designate a beneficiary of her rollover IRA no later than December 31, 2000; and

(4) that, if Taxpayer B rolls over the IRA X distribution into her IRA no later than December 31, 1999, she is not required to receive distributions from her rollover IRA until December 31, 2000.

This ruling letter assumes that IRA X either is or was qualified under Code section 408(a) at all times relevant thereto. It also assumes that the IRA to be set up by Taxpayer B, which will hold the distribution rolled over from IRA X, will also meet 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.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Chief, Employee Plans
Technical Branch 3

Enclosures:

Deleted copy of letter ruling
Form 437