Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Uniform Issue Nos: 408.03-00
408.06-00

Contact Person:

Telephone Number:

In Reference to:
OP:E:EP:T:3
Date:

OCT 1 1999

LEGEND:

Taxpayer A:

Taxpayer B:

Date 1:

Date 2:

Trust C:

Subtrust D:

Subtrust E:

IRA X:

IRA Y:

Dear :

This is in response to a letter dated , as supplemented by correspondence dated , and , in which your authorized representative, on your behalf, requests a series of letter rulings under section 408(d) 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 wife, Taxpayer B. Taxpayer A had not attained age 70 1/2 as of his date of death.

At the time of his death, Taxpayer A owned two individual retirement arrangements (IRAs), IRA X and IRA Y. Taxpayer A had named Trust C the beneficiary of IRA X and IRA Y.

Taxpayers A and B were the grantors and original co-trustees of Trust C. At the death of Taxpayer A, Taxpayer B became the sole trustee of Trust C.

Trust C is divided into two subtrusts, Subtrust D and Subtrust E. Article V of Trust C provides, in pertinent part, that Taxpayer B, as sole trustee, has the authority to allocate Trust C assets between Subtrusts D and E.

The provisions of Trust C which relate to Subtrust D, in pertinent part, provide that Subtrust D income is to be paid to or for the use of Taxpayer B during her lifetime in convenient installments not less frequently than quarterly. Said provisions also provide that the Trust C trustee shall distribute Subtrust D principal to such persons, including Taxpayer B, on such conditions and in such manner as Taxpayer B may appoint and direct in writing during the lifetime of Taxpayer B.

Taxpayer B, as sole trustee of Trust C, proposes to allocate the assets of IRAs X and Y to Subtrust D. Pursuant to her power to direct that withdrawals of principal be made from Subtrust D, Taxpayer B intends to direct the custodians of IRAs X and Y to transfer the assets in said IRAs, by means of trustee to trustee transfers, into one or more IRAs set up and maintained in the name of Taxpayer B. Said transfers will occur during 1999.

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

(1) That IRAs X and Y are not inherited IRAs as that term is defined in Code section 408(d)(3)(C)(i);

(2) that Taxpayer B may be treated as the distributee or payee of IRAs X and Y;

(3) that, to the extent that the amounts standing in IRA X and IRA Y are directly transferred to one or more IRAs set up and maintained in the name of Taxpayer B, then said transferred amounts will not be included in Taxpayer B's gross income for the year in which transferred; and

(4) that neither Taxpayer A's estate nor Trust C will be required to include in gross income for federal tax purposes any portion of the amounts transferred from IRA X and IRA Y to one or more IRAs set up and maintained in the name of Taxpayer B.

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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 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.

Generally, if the proceeds of a decedent's IRA are payable to a trust, are made payable to the trustee of the trust, are then allocated by direction of the trustee to a subtrust created under the trust document, and are then transferred by direction of the surviving spouse, the subtrust beneficiary, to an IRA set up and maintained in the name of the decedent's surviving spouse, 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 sole authority to allocate trust assets between two subtrusts, the surviving spouse, as sole trustee allocates all of decedent's IRAs to a marital

subtrust under the trust, and the surviving spouse is the sole beneficiary of said subtrust with the power to demand payment of as portion or all of the subtrust's assets, the surviving spouse will be treated as having received the IRA proceeds from the decedent and not from the trust.

Thus, under the facts stated above, Taxpayer B is to be treated as having received the IRA X and IRA Y proceeds from Taxpayer A, and accordingly is to be treated as the payee and distributee of IRA X and IRA Y 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 IRAs X and Y are not inherited IRAs as that term is defined in Code section 408(d)(3)(C)(i);

(2) that Taxpayer B may be treated as the distributee or payee of IRAs X and Y;

(3) that, to the extent that the amounts standing in IRA X and IRA Y are directly transferred to one or more IRAs set up and maintained in the name of Taxpayer B, then said transferred amounts will not be included in Taxpayer B's gross income for the year in which transferred; and

(4) that neither Taxpayer A's estate nor Trust C will be required to include in gross income for federal tax purposes any portion of the amounts transferred from IRA X and IRA Y to one or more IRAs set up and maintained in the name of Taxpayer B.

This ruling letter assumes that IRA X and IRA Y either are or were qualified under Code section 408(a) at all times relevant thereto. It also assumes that the IRA (or IRAs) to be set up by Taxpayer B, which will hold the amounts transferred from IRAs X and Y, 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.

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
Chief, Employee Plans
Technical Branch 3

Enclosures:

Deleted copy of letter ruling
Form 437