Internal Revenue Service

Department of the Treasury

Washington, DC 20224

UICs: 408.00-00
408.03-00

200150036

Contact Person:

Telephone Number:

In Reference to:
T:EP:RA:T3
Date:

AUG 10 2001

LEGEND:

Taxpayer A:

Taxpayer B:

Date 1:

Date 2:

Date 3:

Month 4:

Date 5:

State C:

Court D:

Company M:

IRA X:

IRA Y:

Trust Z:

Sum 1:

Sum 2:

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Dear :

This is in response to the , letter submitted by your authorized representative on your behalf, as supplemented by correspondence dated , in which you seek a series of 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 having attained age 70 ½. Taxpayer A was survived by his wife, Taxpayer B, whose date of birth was Date 5 and who has not attained age 70 ½.. At his death, Taxpayer A was the owner of two individual retirement arrangements (IRAs), IRA X and IRA Y, maintained with Company M, which your authorized representative asserts are qualified within the meaning of Code section 408(d). Trust Z is the named beneficiary of IRAs X and Y.

Several individuals are the named beneficiaries of Trust Z. Taxpayer B, however, is not a beneficiary of Trust Z.

The provisions of Trust Z, in relevant part, provide that, after the death of Taxpayer A, distributions from any IRA of which Trust Z is the beneficiary thereof shall be made in a manner that satisfies the minimum distribution rules of Code section 401(a)(9) which apply to IRAs pursuant to Code section 408(a)(6). Furthermore, the provisions of Trust Z do not provide for the payment of administrative or funeral expenses out of trust assets.

By means of a Notice of Election, dated Date 3, 2000, Taxpayer B, as Taxpayer A's surviving spouse, exercised her personal right of election given her by section 5-1.1-A of the State C Estates, Powers and Trusts Law, and elected to take her elective share of Taxpayer A's estate instead of the estate share given her under Taxpayer A's last will and testament. Said election was filed with Court D, a court of competent jurisdiction. During Month 4, 2001, Court D granted Taxpayer B's election of petition. As a result, Taxpayer B is entitled to receive Sum 1 from IRA X and Sum 2 from IRA Y.

Taxpayer B intends to receive a distribution of Sum 1 from IRA X and a distribution of Sum 2 from IRA Y. She will then roll over said IRA distributions into an IRA set up and maintained in her name. Said rollover(s) will occur no later than the 60th day as measured from the date that Taxpayer B receives said IRA distributions, and will occur no later than December 31, 2001.

Your authorized representative has asserted, on your behalf, that required distributions either have been made or will be made from IRAs X and Y for all calendar years since Taxpayer A's death including the year of his death.

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

1. That if Taxpayer B elects against the last will of Taxpayer A, she will be treated as the payee or distributee of her elective share of IRAs X and Y for purposes of Code section 408(d)(3);

2. That, to the extent they represent Taxpayer B's elective share, IRAs X and Y will not be treated as inherited IRAs within the meaning of Code section 408(d) with respect to Taxpayer B;

3. that Taxpayer B is eligible to roll over the distributions from IRAs X and Y into an IRA set up and maintained in her name pursuant to Code section 408(d)(3)(A)(i) as long as the rollover of such distributions occurs no later than the 60th day following the day said IRA X proceeds are distributed from said IRAs X and Y, and as long as there is compliance with the Code section 401(a)(9) required distribution rules for calendar year 2001; and

4. that Taxpayer B will not be required to include in her gross income for federal income tax purposes for calendar year 2001, the year in which said IRAs X and Y distributions will occur and the year in which said rollover(s) will be made, the amounts distributed from said IRAs X and Y and timely rolled over into an IRA set up and maintained in Taxpayer B's name.

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-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, 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 not a beneficiary of a trust which is the named beneficiary of two IRAs maintained in the name of a IRA holder at his death but exercises her right under the laws of the state in

which the deceased resided at his death to take against the deceased's will, and, as a result of said exercise, receives a portion of each of the two IRAs outside of the trust.

In this case, Taxpayer B, as surviving spouse of Taxpayer A, has elected to take against Taxpayer A's will pursuant to the laws of State C. As a result, Taxpayer B is entitled to receive a portion of IRA X and a portion of IRA Y directly from the IRAs and not through Trust Z. Taxpayer B will take her elective shares of IRAs X and Y and roll them into an IRA set up and maintained in her name. Said rollover(s) will occur within 60 days of the date(s) on which the IRA X and IRA Y proceeds are distributed from said IRA s X and Y. 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:

1. That if Taxpayer B elects against the last will of Taxpayer A, she will be treated as the payee or distributee of her elective share of IRAs X and Y for purposes of Code section 408(d)(3);

2. That, to the extent that they represent Taxpayer B's elective share, IRAs X and Y will not be treated as inherited IRAs within the meaning of Code section 408(d) with respect to Taxpayer B;

3. that Taxpayer B is eligible to roll over the distributions she receives from IRAs X and Y into an IRA set up and maintained in her name, pursuant to Code section 408(d)(3)(A)(i) as long as the rollover(s) of such distributions occur no later than the 60th day following the day (dates) said IRAs X and Y proceeds are distributed from said IRAs X and Y, and as long as there is compliance with the Code section 401(a)(9) required distribution rules for calendar year 2001, the year of distribution; and

4. that Taxpayer B will not be required to include in her gross income for federal income tax purposes for calendar year 2001, the year in which said IRA Xs and Y distributions will occur and the year in which said rollover(s) to an IRA set up and maintained in Taxpayer B's name will be timely made, the amounts distributed from said IRAs X and Y and timely rolled over into Taxpayer B's IRA.

This ruling letter is based on the assumption that IRAs X and Y, referenced herein, either have complied or will comply with the requirements of Code section 408(a) at all times relevant thereto. It also assumes that Taxpayer B's rollover IRA will comply with the requirements of Code section 408(a) at all times relevant thereto.
Finally, it assumes that the course of action outlined above will occur no later than December 31, 2001.

This letter ruling does not address issues, if any, that arise under the Proposed Income Tax Regulations issued under Code sections 401(a)(9) and 408 that were published at 2001-11 I.R.B. 865 (March 12, 2001).

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, a copy of this letter ruling is being sent to your authorized representative.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Manager,
Employee Plans
Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of letter ruling
Form 437

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