



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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UIL: 408.03-00

MAY 18 2004

SE.T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

IRA X:

Trustee M:

Trustee N:

Children:

County C:

This is in response to the February 3, 2004 letter, submitted by your authorized representatives on your behalf, in which you request a series of letter rulings under section 408(d)(3) of the Internal Revenue Code. Your letter of February 3, 2004, was supplemented by letters of May 11 and 12, 2004. The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was October 1, , died on January Taxpayer A was survived by his wife, Taxpayer B, whose date of birth was July . At the time of his death, Taxpayer A maintained IRA X, an individual retirement arrangement. Taxpayer A had not reached the required beginning date for distributions from IRAs. The estate of Taxpayer A was named as the beneficiary of IRA X. Pursuant to Taxpayer A's will, dated March Taxpayer B was named as personal representative of Taxpayer A's estate. Domiciliary Letters evidencing this fact were issued by the County C Probate Registrar on May

Article 6, section 6.1(16) of Taxpayer A's will provides, in relevant part, that the personal representative may make distributions "in cash or in-kind" and "without any requirements that each item be distributed or divided ratably." After distribution of tangible personal property, the granting of a specific bequest and an option to purchase certain real estate, all provided for in Article 2, Article 3 of Taxpayer A's will divides the residue of the estate into marital and residual shares

following a fractional formula designed to fund the marital share with a fraction of the estate sufficient to eliminate estate tax. It is represented that the will, including this provision, does not preclude allocating the entire proceeds of IRA X to the marital share and such an allocation is in accord with Wisconsin Law. Article 3, section 3.1(B), distributes the marital share to the trustee of the marital trust to be administered pursuant to Article 4. Article 4, section 4.1(C), states "My spouse shall have the right from time to time to withdraw from the principal of this marital trust upon my spouse's written request delivered to the trustee all or any part of said principal." Article 9, section 9.1, appoints Trustee M or its successor or successors as initial trustee of any trust to be created hereunder." Article 6, section 6.7, states generally that any trustee may resign after thirty days written notice and further that "in the event the Trustee is removed or ceases to act for any reason, then my spouse, if living, shall appoint a successor Trustee."

The successor of Trustee M is Trustee N. On May , Trustee N formally declined to serve as trustee of the trusts created under the provisions of Taxpayer A's will. On June Letters of Trust were issued to the three children (Children) of Taxpayer A and Taxpayer B. On January , the Children resigned as co-trustees of the marital trust. It is represented that the declination of Trustee N and the resignations of the Children are valid under state law. Effective midnight, January pursuant to the authority given to her in Article 6, section 6.7, of Taxpayer A's will, Taxpayer B appointed herself as trustee of the marital trust.

Taxpayer B, as personal representative of the estate, will cause the IRA X proceeds to be distributed to the estate; whereupon she will allocate the proceeds to the marital share. Pursuant to Article 3, section 3.1(B), of the will she will then distribute the proceeds to the marital trust of which she is the trustee. In accordance with her right under the marital trust to request distribution of the IRA X proceeds, she will do so as beneficiary of the marital trust. Finally, pursuant to said request, she will in her capacity as trustee, directly transfer the IRA proceeds to an IRA in her own name.

No Federal or state estate or transfer taxes were due upon Taxpayer A's death and all expenses were paid from assets other than IRA X. The statutory time for filing claims against Taxpayer A's estate expired on June a date prior to the beneficiary determination date (September . No further such claims may be made against the estate, the personal representative or the heirs and beneficiaries of the decedent. No part of IRA X has been or will be charged with or used for payment of debts, funeral bills, expenses of administration or taxes. At all times subsequent to Taxpayer A's death, IRA X has been maintained in his name. No distributions have been made from IRA X as of the date of this ruling request and IRA X remains in the name of Taxpayer A.

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

1. IRA X will not be treated as an inherited IRA, within the meaning of section 408(d) of the Code, with respect to Taxpayer B.
2. Taxpayer B will be eligible to roll over or transfer by means of a trustee to trustee transfer the proceeds from IRA X into an IRA set up and maintained in her own name, as long as the rollover or transfer occurs no later than the 60th day from the date the proceeds are received by Taxpayer B in her capacity as personal representative of Taxpayer A's estate.

3. Taxpayer B will not be required to include in her gross income for federal income tax purposes, for the year in which the distribution and rollover or transfer of the IRA X proceeds is made pursuant to the second requested ruling, any portion of the amounts timely rolled over or transferred to 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.

Code section 408(a)(6) provides that under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit an IRA trust is maintained.

On April 17, 2002, "Final" Income Tax Regulations were published in the Federal Register with respect to Code § 401(a)(9) and 408(a)(6). (See also 2002-19 I.R.B. 852, May 13, 2002). § 1.408-8 of the "Final" Regulations, Question and Answer 5, provides that a surviving spouse of an IRA owner may elect to treat the spouse's entire interest as a beneficiary in an individual's IRA as the spouse's own IRA. 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.

Although not specifically stated in the "Final" Regulations, a surviving spouse may not elect to treat the IRA of a decedent as his/her own if an estate is the beneficiary of the IRA even if the spouse is both the sole executor(trix) of the estate and also the sole beneficiary of the estate.

The Preamble to the "Final Regulations" 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/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.

In this case, the IRA X account balance remaining at Taxpayer A's death is payable to Taxpayer A's estate pursuant to the terms of Taxpayer A's will. Taxpayer B, Taxpayer A's surviving spouse, is the personal representative of Taxpayer A's estate and the beneficiary of the marital trust set up thereunder. As personal representative, Taxpayer B will cause the IRA X proceeds to be paid to Taxpayer A's estate after which she will allocate them to the marital share and distribute them to the marital trust. As trustee and beneficiary of the marital trust, she will transfer the proceeds directly from the marital trust to an IRA in her own name. Said transfer will occur within 60 days of the date the IRA amounts are distributed from IRA X.

Under the facts stated above, Taxpayer B 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 ruling requests, we conclude as follows:

1. IRA X will not be treated as an inherited IRA, within the meaning of section 408(d) of the Code, with respect to Taxpayer B.
2. Taxpayer B will be eligible to roll over or transfer by means of a trustee to trustee transfer the proceeds from IRA X into an IRA set up and maintained in her own name, as long as the rollover or transfer occurs no later than the 60th day from the date the proceeds are received by Taxpayer B in her capacity as personal representative of Taxpayer A's estate.
3. Taxpayer B will not be required to include in her gross income for federal income tax purposes, for the year in which the distribution and rollover or transfer of the IRA X proceeds is made pursuant to the second requested ruling, any portion of the amounts timely rolled over or transferred to an IRA set up and maintained in Taxpayer B's name.

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 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 X distribution will be made within the time frame referenced in Code section 408(d)(3)(A)(i).

It is noted that Taxpayer B has reached the required beginning date and her new IRA is subject to the applicable mandatory distribution requirements of Code section 408(a)(6).

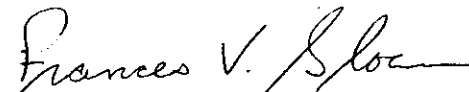
Pursuant to a power of attorney on file in this office, the original of this letter ruling is being sent to your first listed authorized representative and a copy is being sent to your second listed representative.

200433026

The author of this ruling is
at

who may be reached

Sincerely yours,

A handwritten signature in cursive script, reading "Frances V. Sloan".

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Form 437