



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

OCT - 6 2004

Uniform Issue List: 408.03-00

200453016

SE.T.EP.RA.T3

LEGEND:

Taxpayer A: =

Amount D =

IRA X: =

IRA Y =

IRA Z =

Dear

This is in response to a letter dated November 5, 2002, submitted by your authorized representative, in which you request a letter ruling under section 408(d)(3) of the Internal Revenue Code (the "Code").

Taxpayer A, whose date of birth is [REDACTED], died on [REDACTED]. Taxpayer A was survived by you, his wife. Your date of birth is [REDACTED]. At the time of his death, Taxpayer A maintained three individual retirement accounts: IRA X, IRA Y, and IRA Z. Taxpayer A had not reached the required beginning date for distributions from IRAs at the time of his death, and he had not begun receiving distributions. IRAs X, Y, and Z, collectively had a balance of Amount D as of the date of Taxpayer A's death.

The estate of Taxpayer A was named as the beneficiary of IRA X, IRA Y, and IRA Z. Pursuant to Taxpayer A's will, dated [REDACTED], you were named as personal representative of Taxpayer A's estate.

Item Fourth of Taxpayer A's will provides, in relevant part, that the personal representative has complete discretion over the administration of the estate. Item Seventh provides, in part, as follows:

I give and bequeath and devise the rest, residue and remainder of my property, whether real, personal or mixed, wherever situated and however and whenever acquired, including the proceeds from my insurance policies wherein the beneficiary is not specifically designated, and from any other policies that may or are to become payable to my estate, unto [my wife]...

From the date of your appointment as personal representative of the estate of Taxpayer A, [REDACTED] to the present, you have treated IRAs X, Y, and Z as estate assets. The IRAs, upon distribution, will fall into the residue of the estate, of which you are the sole beneficiary.

At all times subsequent to Taxpayer A's death, IRAs X, Y, and Z have been maintained in his name. No distributions have been made from the IRAs as of the date of this ruling request and IRA X, IRA Y and IRA Z remain in the name of Taxpayer A.

You propose to request that distribution of IRAs X, Y, and Z be made to the estate of Taxpayer A. Upon receipt, you, as personal representative of said estate, will transfer the IRAs to you as sole residuary beneficiary of Taxpayer A's estate. You will then contribute the IRAs to one or more IRAs set up and maintained in your name. The IRA contribution(s) will be made no later than the 60th day following the date on which IRAs X, Y, and Z are distributed to Taxpayer A's estate.

Based on the foregoing you request a ruling that IRA X, IRA Y, and IRA Z will not be treated as inherited IRAs, within the meaning of section 408(d) of the Code, with respect to you and that you will be eligible to roll over the proceeds from IRA X, IRA Y, and IRA Z into one or more IRAs set up and maintained in your own name, as long as the rollover(s) occur no later than the 60th day from the date the proceeds are received by you in your capacity as personal representative of Taxpayer A's estate.

With respect to your ruling request, section 408(d)(1) of the Code 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.

Section 408(d)(3) of the Code 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).

Section 408(d)(3)(A)(i) of the Code 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.

Section 408(d)(3)(C)(i) of the Code 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.

Section 408(d)(3)(C)(ii) of the Code 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 section 408(d)(3)(C)(ii) of the Code, 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 408(a)(6) of the Code 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 Sections 401(a)(9) and 408(a)(6) of the Code. (See also 2002-19 I.R.B. 852, May 13, 2002). Section 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 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 personal representative of the estate and also the sole beneficiary of the estate.

The Preamble to the 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, IRA Y, and IRA Z account balance(s) are payable to Taxpayer A's estate pursuant to the terms of Taxpayer A's beneficiary designations. You, Taxpayer A's

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surviving spouse, are both the personal representative of Taxpayer A's estate and the sole residuary beneficiary of his estate. As personal representative, you will cause IRAs X, Y, and Z to be distributed to Taxpayer A's estate. Subsequent to said distributions, you will pay the IRAs to yourself as the estate's beneficiary. Within 60 days of the date that IRAs X, Y, and Z are distributed to Taxpayer A's estate, you will contribute the IRAs to one or more IRAs set up in your name.

Under the facts stated above, you will be treated as the payee and beneficiary of IRAs X, Y, and Z for purposes of sections 408(d)(1) and 408(d)(3) of the Code. Thus, with respect to your ruling request, we conclude that IRA X, IRA Y, and IRA Z will not be treated as inherited IRAs, within the meaning of section 408(d) of the Code, with respect to you and that you will be eligible to roll over the proceeds from IRA X, IRA Y, and IRA Z into one or more IRAs set up and maintained in your own name, as long as the rollover(s) occur no later than the 60th day from the date the proceeds are received by you in your capacity as personal representative of Taxpayer A's estate.

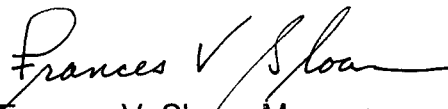
This ruling letter assumes that IRA X, IRA Y, and IRA Z either are or were qualified under section 408(a) of the Code at all times relevant thereto. It also assumes that the rollover IRAs to be set up by you will also meet the requirements of section 408(a) of the Code at all times relevant thereto.

Finally, it assumes that your rollover(s) of the distributions from IRAs X, Y, and Z will be made within the time frame referenced in section 408(d)(3)(A)(i) of the Code.

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

If you have any questions, please contact ***** (ID no. **-*****) at (***) ***-****.

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of letter ruling
Form 437

CC: