

200605017



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Uniform Issue List: 408.00-00

SE: T: EP: RA: T3

Legend:

Decedent A	=
Date M	=
Date N	=
IRA X	=
State U	=

Dear

This is in response to your request for a private letter ruling, submitted by your authorized representative by letters dated August 3, 2005, and August 9, 2005, and received by us on September 21, 2005, concerning the proper treatment of a distribution from Decedent A's individual retirement arrangement ("IRA") under section 401(a)(9) and 408(d)(3) of the Internal Revenue Code ("Code").

Your authorized representative has submitted the following facts and representations:

Decedent A, your husband, was born on Date M, 1924 and died on Date N, 2003, after attaining age 70 $\frac{1}{2}$. At the time of his death, Decedent A maintained IRA X. IRA X meets the requirements of section 408(a) of the Code. Pursuant to the IRA X Beneficiary Designation Form, you are the sole beneficiary of IRA X, and, as represented in the letter ruling request, you were the named beneficiary at the time of Decedent A's death.

Your authorized representative also represents that under the laws of State U, the IRA X Beneficiary Designation Form is recognized as valid for determining the beneficiary of said IRA.

Pursuant to the terms of the IRA X beneficiary designation form, you may withdraw your entire share of the account at any time by notice to the custodian of IRA X.

As beneficiary thereof, you propose to either request a distribution of the full amount standing under IRA X and, within 60 days of receipt, contribute the full amount received into another IRA set up and maintained in your name. Alternatively, you may direct the custodian of IRA X to convert said IRA X into an IRA set up and maintained in your name.

Based on the foregoing you request the following rulings:

1. That Decedent A's estate will not be treated as payee or distributee of IRA X for purposes of section 408(d)(3) of the Code.
2. That you are the designated beneficiary of IRA X pursuant to section 1.401(a)(9)-4, Question & Answer 4(a) of the Income Tax Regulations ("regulations"); and
3. That you are permitted to treat IRA X as your own or, alternatively, affect a rollover of IRA X into an IRA set up and maintained in your name.

With respect to your ruling requests, section 408(d)(1) of the Code provides that, except as 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 sets forth the rules for rollovers of distributions from eligible retirement plans.

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 the IRA trust is maintained.

Section 401(a)(9)(A) of the Code provides, in general, that a trust will not be considered qualified unless the plan provides that the entire interest of each employee (or IRA holder) (i) will be distributed to such employee not later than the required beginning date, or (ii) will be distributed, beginning not later than the required beginning date, over the life of such employee or over the lives of such employee and a designated beneficiary or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary.

Section 401(a)(9)(B)(i) of the Code provides that, with respect to an employee/IRA participant who dies after distributions have begun in accordance with subparagraph (A)(ii) (after his "required beginning date", as that term is defined in Code section 401(a)(9)(C)), distributions of the remaining portion of that employee's interest under a plan must be made at least as rapidly as under the method of distribution being used under subparagraph (A)(ii) as of the date of his death.

Section 401(a)(9)(C) of the Code defines "required beginning date" with respect to an IRA as the April 1 of the calendar year following the calendar year in which the IRA holder attains age 70 $\frac{1}{2}$.

Section 401(a)(9)(E) of the Code defines the term "designated beneficiary" as any individual designated as a beneficiary by the employee.

Section 1.401(a)(9)-4, Q&A-3, of the regulations provides that only individuals may be designated beneficiaries for purposes of section 401(a)(9). A person who is not an individual, such as the employee's estate, may not be a designated beneficiary

Section 1.401(a)(9)-4, Q&A-4 (a), of the regulations, provides, in relevant part, that in order to be a designated beneficiary, an individual must be a beneficiary as of the date of (the employee's or IRA holder's) death. Generally, an employee's designated beneficiary will be determined based on the beneficiaries designated as of the date of death who remain beneficiaries as of September 30 of the calendar year following the calendar year of death.

Section 1.408-8 of the regulations, Q&A-5(a), provides that the surviving spouse of an individual may elect, in the manner described in paragraph (b) of this A-5, to treat the spouse's entire interest as a beneficiary in an individual's IRA (or the remaining part of such interest if distributions thereof has commenced to the spouse) as the spouse's own IRA. The election is permitted to be made at any time after the individual's date of death. In order to make the election, the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If the election is made in the calendar year containing the IRA holder's death, the spouse is required to take a required distribution for that year determined with respect to the deceased IRA holder under the rules of A-4(a) of section 1.401(a)(9)-5.

Section 1.408-8 of the regulations, Q&A-5(b) provides that the election described in paragraph (a) is made by the surviving spouse redesignating the account as an account in the name of the surviving spouse as IRA owner rather than as beneficiary.

In this case, Decedent A died during calendar year 2003. As of the date of his death, Decedent A maintained IRA X. Decedent A named you the sole beneficiary of his IRA X pursuant to an IRA X Beneficiary Designation Form which your authorized

representative asserts is valid under the laws of State U. You remained the sole named beneficiary of IRA X as of Decedent A's date of death and as of the date of this ruling request.

You propose to take one of two actions which will result in IRA X's conversion into an IRA set up and maintained in your name.

Accordingly, with respect to your ruling requests, we conclude:

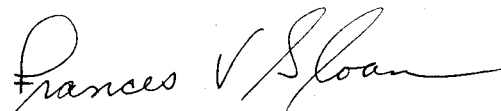
1. That Decedent A's estate will not be treated as payee or distributee of IRA X for purposes of section 408(d)(3) of the Code.
2. That you are the designated beneficiary of IRA X pursuant to section 1.401(a)(9)-4, Question & Answer 4(a), of the regulations; and
3. That you are permitted to either treat IRA X as your own or, alternatively, affect a rollover of IRA X into an IRA set up and maintained in your name.

No opinion is expressed as to the federal tax consequences of the transaction described above under any other provisions of the Code.

This ruling is directed only 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.

A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office. If you have any questions concerning this letter ruling, please contact ***** (ID: **-****) at (***) ***-**** (not a toll-free number).

Sincerely Yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

CC: