



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

JUN 20 2006

Uniform Issue List: 408.01-00

T: E P: R A: T 3

Legend:

- Decedent A =
- Trustee C =
- Amount D =
- State F =
- Court G =
- Date M =
- Date N =
- Date P =
- Date Q =
- Date R =
- IRA X =
  
- Account Y =

Dear

This is in response to your request for a private letter ruling, submitted by your authorized representative, found in correspondence dated January 26, 2006, concerning the proper treatment of a distribution from Decedent A's individual retirement Account ("IRA") (IRA X) under section 408d(3) of the Internal Revenue Code (the "Code").

Page 2

Your authorized representative has submitted the following facts and representations in support of your ruling request:

Decedent A was born on Date N, 1942, and died on Date M, 2005 while a resident of State F without having attained age 70 ½. You were married to Decedent A at the time of his death. Decedent died testate. You filed a petition with Court G seeking appointment as Executrix of Decedent A's estate and on Date P, 2005, you were granted such appointment. Article FOURTH of Decedent A's Last Will and Testament provides that Decedent A's entire residuary estate shall be distributed to you outright and free of trust.

At his death Decedent A maintained IRA X with Trustee C. As of the date of death of Decedent A the value of IRA X was approximately Amount D. The records of Trustee C do not reflect a beneficiary designation for Decedent A's IRA X. Thus, the beneficiary of IRA X became Decedent A's estate, and IRA X became part of the residuary portion of said estate. In connection with the administration of the estate, you authorized the distribution of Decedent A's IRA X to the estate's brokerage account (Account Y) on Date Q, 2005. Said distributed amounts are currently maintained in a money market fund within Account Y.

In your capacity as Executrix of Decedent A's estate, you were advised to distribute the entire balance of Account Y to yourself as sole residuary beneficiary of the estate. You were further advised to roll over the proceeds to your own IRA maintained in your name within 60 days of the distribution from IRA X. However, on Date R, 2005, which was within 60 days of Date Q, 2005, an advisor from Trustee C advised you that said Trustee C would not allow you to complete a rollover without first obtaining a private letter ruling from the Internal Revenue Service. As a result of attempting to receive such private letter ruling, the 60-day rollover period expired.

You, acting as sole representative of Decedent A's estate, will request Trustee C to pay the IRA X proceeds to yourself as sole residuary beneficiary of Decedent A's estate. Upon receipt of a favorable letter ruling from the Internal Revenue Service, you will then roll over the proceeds of IRA X into an individual retirement account set up and maintained in your name.

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

1. That the proceeds of IRA X that will be received by you as sole beneficiary of the estate of Decedent A will be treated as being paid directly from IRA X to you. As a result, you will be treated as the payee or distributee of said IRA X proceeds for purposes of section 408(d)(1) of the Code.
2. That IRA X will not be treated as an inherited IRA within the meaning of section 408(d)(3) of the Code with respect to you.
3. That you are eligible to roll over the distribution from IRA X into an IRA set up and maintained in your name.
4. That, pursuant to section 408(d)(3)(I) of the Code, the Service waive the 60-day rollover requirement with respect to the distribution made from IRA X.

5. That you be authorized sixty (60) days from the date of this letter ruling to pay the funds distributed from IRA X to yourself as sole residuary beneficiary of Decedent A's estate and then roll over such amount to an IRA set up in your name.
6. That you will not be required to include in your gross income for federal income tax purposes for the year in which the IRA X distribution occurred (2005) and the year in which said rollover is made (2006), any portion of the amount distributed from IRA X and timely rolled over into an IRA set up and maintained in your name.

With respect to ruling requests one, two, and three, 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), 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.

On April 17, 2002, Final Income Tax Regulations ("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 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 executor 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 and/or an estate.

In this case, the IRA X account balance remaining at Decedent A's death was payable to Decedent A's estate. Pursuant to the terms of Decedent A's last will, the residue of the estate, which includes IRA X, is to be paid to you as sole residuary beneficiary thereof. As sole executrix of Decedent A's estate, you will cause the IRA X proceeds to be paid to you as beneficiary thereof. You then will transfer the IRA X proceeds into an IRA set up and maintained in your name.

The facts above indicate that you are the sole beneficiary of Decedent A's estate and the sole residuary beneficiary thereof. Thus, upon Decedent A's death, pursuant to his will, you had the authority to pay yourself all of Decedent A's residuary estate including IRA X. Thus, no third party had any authority to preclude your receiving Decedent A's IRA X. Under the facts stated above, it is appropriate to treat you as the payee and beneficiary of IRA X for purposes of sections 408(d)(1) and 408(d)(3) of the Code.

Thus, with respect to your ruling requests one, two, and three, we conclude as follows:

1. That the proceeds of IRA X that will be received by you as sole beneficiary of the estate of Decedent A will be treated as being paid directly from IRA X to you. As a result, you will be treated as the payee or distributee of said IRA X proceeds for purposes of section 408(d)(1) of the Code.
2. That IRA X will not be treated as an inherited IRA within the meaning of section 408(d)(3) of the Code with respect to you.
3. That you are eligible to roll over the distribution from IRA X into an IRA set up and maintained in your name.

With respect to ruling requests four, five, and six, section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by you is consistent with your assertion that your failure to accomplish a timely rollover was caused by Trustee C's requiring that you obtain a private letter ruling before it would accept the rollover contribution which you attempted to make within 60 days of the date Amount D was distributed from IRA X and your inability to obtain such ruling with the 60-day rollover period.

Therefore, with respect to ruling requests four, five and six, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. You are granted a period of 60 days from the date of this ruling letter to contribute Amount D, or any portion thereof, into a rollover IRA set up and maintained in your name. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution of Amount D, or any part thereof, into an IRA set up and maintained in your name will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code. Thus, you will not be required to include in your gross income, for federal income tax purposes, either for the year in which the IRA X distribution occurred (2005) or the year in which said rollover is made (2006), any portion of the amount distributed from IRA X and timely rolled over into an IRA set up and maintained in your name.

Page 6

This ruling letter assumes that IRA X either is or was qualified under section 408(a) of the Code at all times relevant thereto. It also assumes that the rollover IRA into which you will roll over part or all of the IRA X distribution will also meet the requirements of section 408(a) at all times relevant thereto. Finally, it assumes that your rollover of the IRA X distribution will be made within the time frame referenced in this letter ruling.

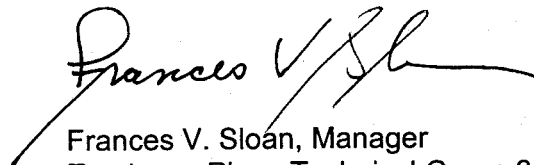
This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

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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, please call \*\*\*\*\* (ID \*\*-\*\*\*\*) at (\*\*\*) \*\*\*-\*\*\*\* (not a toll free number).

Sincerely Yours,



Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:

Notice of Intention to Disclose  
Deleted Copy of Ruling

CC: