



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200650022

SEP 18 2006

T:EP:RA:T3

Uniform Issue List: 408.01-00

Legend:

Decedent A =
Estate B =
County F =
Date M =
Date N =
Date P =
Date R =
Date S: =
IRA X =

Dear

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

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

You are the spouse of Decedent A. You were married to Decedent A at the time of his death. You were born on Date P, 1954. Decedent A was born on Date R, 1934 and died on Date M, 2005 at age 71. Decedent A maintained IRA X. Decedent A did not designate an individual beneficiary in IRA X. He did, however execute a beneficiary designation form for IRA X which stated that the beneficiary was to be determined "per my will".

On Date N, 2001, Decedent A executed his last will and testament. Pursuant to Items III and IV of the will, you are to receive all of the property passing under the estate through said Items. It has been represented on your behalf that IRA X passes under said Items. The will was probated on Date S, 2005, by a Judge of the Probate Court of County F at which time you were named the sole executrix of Estate B.

As executor of Decedent A's will, you intend, pursuant to Items III and IV of the will, and the beneficiary designation form of IRA X, to request that IRA X be distributed to you as the sole executrix of Estate B. After said distribution is made, you will pay said IRA X to yourself as the sole beneficiary of said IRA X pursuant to Items III and IV of Decedent A's last will. You will then contribute the IRA X proceeds to an IRA set up and maintained in your own name and take distributions from such IRA under the terms of the IRA. You intend to transfer the funds distributed from IRA X to an IRA, established in your own name, within 60 days from the date of distribution to yourself as the executrix of Estate B.

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

1. That you, as sole beneficiary under Items III and IV of the will of Decedent A will be able to roll over the proceeds from IRA X into a separate IRA established in your own name within 60 days of the date that the proceeds are distributed to you as executrix of the Estate of Decedent A; and
2. That the amounts distributed from IRA X which are contributed to your rollover IRA will not be includible in your gross income in the year of distribution and contribution (2006). Instead, said funds will be taxed when distributed in accordance with the rule found in Code section 408(d)(1).

With respect to your ruling requests, 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)(B) of the Code provides, generally, that Code subsection 408(d)(3)(A)(1) does not apply to a distribution received from an IRA if at any time during the 1-year period ending on the date of receipt the receiving individual received any other amount described in said Code subsection which was not includible in his gross income because of the application of said subsection.

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.

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 Code section 401(a)(9) and 408(a)(6). (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 or estate is named as beneficiary of the IRA, this requirement is not satisfied even if the spouse is the sole beneficiary of the trust or 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 account balance remaining at Decedent A's death is payable to you as beneficiary under Items III and IV his will which Items govern the disposition of IRA X. You, Decedent A's surviving spouse, are the executor of Decedent A's estate. As executor, you will cause the IRA X proceeds to be paid to you after which you will allocate them to yourself. You will then transfer the proceeds directly to an IRA in your name. Said transfer will occur within 60 days of the date the IRA amounts are distributed from IRA X to you as executrix of Decedent A's Estate.

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Under the facts stated above, you are to be treated 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 we conclude:

1. That you, as sole beneficiary under Items III and IV of the will of Decedent A, will be able to roll over the proceeds from IRA X into a separate IRA established in your own name within 60 days of the date that the proceeds are distributed to you as executrix of the Estate of Decedent A; and
2. That the amounts distributed from IRA X which are contributed to your rollover IRA will not be includible in your gross income in the year of distribution and contribution (2006). Instead, said funds will be taxed when distributed in accordance with the rule found in Code section 408(d)(1).

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 to be set up by you 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 section 408(d)(3)(A).

Please note that this letter ruling does not authorize the rollover of any amount(s) required to be distributed under Code sections 401(a)(9) and 408(a)(6).

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.

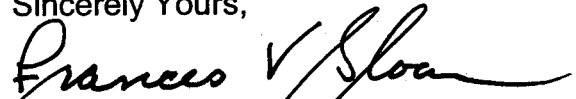
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A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions, please call
(not a toll free number).

(ID -) at () -

Sincerely Yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Notice of Intention to Disclose
Deleted Copy of Ruling

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CC: