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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

OCT 25 2006

UICs: 408.00-00
408.02-01
408.03-00

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Taxpayer D:

Trust T:

Account W:

Date 1:

Date 2:

Date 3:

Date 4:

Month 1:

State U:

Court V:

IRA X:

IRA Y:

Company AA:

Company BB:

Company CC:

Amount 1:

Amount 2:

Dear :

This is in response to the , letter submitted on your behalf by your authorized representative, as supplemented by correspondence dated , and , in which you request several letter ruling requests under section 408(d)(3) of the Internal Revenue Code ("Code"). The following facts and representations support said ruling request.

Taxpayer A, whose date of birth was Date 1, 1928, died on Date 2, 2003, a resident of State U, having attained age 70 ½. Taxpayer A was survived by his wife, Taxpayer B, and two children. At his death, Taxpayer A maintained two individual retirement arrangements ("IRAs"), IRA X and IRA Y, with Company AA and Company BB, respectively. It has been represented that IRAs X and Y were described in Code section 408(a)(6). IRA X's value as of the date of Taxpayer A's death approximated Amount 1; and IRA Y's value as of the date of Taxpayer A's death approximated Amount 2.

Trust T, created under the terms of Taxpayer A's Last Will and Testament, dated Date 3, 1999, was the named beneficiary of Taxpayer A's IRAs X and Y. Taxpayer C and Taxpayer D were the named trustees of Trust T.

On or about Date 4, 2006, Court V of State U, a court of competent jurisdiction, reformed Trust T. Pursuant to the reformation, amounts from IRA X and IRA Y which pass through Trust T are to be paid directly, and free of trust limitations, to Taxpayer B. The reformation of the trust is effective as of the date prior to the date of Taxpayer A's death.

During Month 1, 2004, Taxpayers C and D, the trustees of Trust T, having decided to consolidate IRAs X and Y into one IRA, requested distributions of the full amounts standing in IRAs X and Y. Said distributions were made, and Taxpayers C and D, as co-trustees, placed said distributed amounts into Account W, a non-IRA account maintained

with Company CC. It has been asserted that Taxpayers C and D believed that they were accomplishing a transaction that continued to defer federal tax on the distributions made from IRAs X and Y. It has also been asserted that Taxpayers C and D, the co-trustees of Trust T, did not consult with either an attorney or another tax advisor prior to transferring the distributions from IRAs X and Y into Account W. Additionally, it has been asserted on your behalf that Taxpayer B was not advised, and was unaware, that Taxpayers C and D, as co-trustees of Trust T, transferred the amounts distributed from IRAs X and Y into a non-IRA account, Account W.

It has been asserted on your behalf that, with respect to years distributions have been made to Taxpayer B from Account W in amounts sufficient to comply with the minimum required distribution rules of Code sections 401(a)(9) and 408(a)(6) as if Account W had been an IRA.

Early in 2005, the accountant handling Trust T's tax affairs advised Taxpayers C and D that the distributions made from IRAs X and Y had not been rolled over into an IRA. It has been represented that this was the occasion on which Taxpayers C and D initially became aware that their receiving distributions from IRAs X and Y, as co-trustees of Trust T, gave rise to taxable consequences.

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

1. That Taxpayer B was eligible to roll over Amount 1, which was distributed from IRA X during calendar year , and Amount 2 distributed from IRA Y during calendar year , into one or more IRA(s) set up and maintained in her name; and
2. That, pursuant to Code section 408(d)(3)(I) and Revenue Procedure 2003-16, Taxpayer B is granted a period not to exceed 60 days as measured from the date of this letter ruling to roll over the amounts distributed from IRAs X and Y during calendar year , less the amounts representing the calendar year and) minimum required distributions, referenced above, into one or more IRAs set up and maintained in her name.

With respect to your ruling requests, Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Code section 408(a)(6) provides, in general, that rules similar to the rules of section 401(a)(9) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained

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 60th 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 60th 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)(C) of the Code provides, in general, that the IRA rollover rules do not apply to inherited accounts. The term "inherited account" does not apply to an IRA that is acquired by the surviving spouse of an IRA owner by reason of the death of the IRA owner.

Section 408(d)(3)(E) of the Code provides, in general, that distributions required to be made under either section 408(a)(6) or section 408(b)(3) may not be rolled over.

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.

Revenue Procedure 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.

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

In this case, the facts of this ruling request show that Taxpayer B is the surviving spouse of Taxpayer A. Furthermore, the facts indicate that Trust T was the named beneficiary of Taxpayer A's IRA X and IRA Y, and that relevant provisions of Trust T, as reformed, provide that, after said IRAs were paid to Trust T, they were to be paid directly to Taxpayer B. Thus, under the facts of this case, IRAs X and Y were to be paid to Taxpayer B without any third party having any discretion with respect thereto. As a result, Taxpayer B would have been eligible to roll over distributions from IRAs X and Y.

Thus, with respect to your first ruling request, we conclude as follows:

1. That Taxpayer B was eligible to roll over Amount 1, which was distributed from IRA X during calendar year and Amount 2 distributed from IRA Y during calendar year , into one or more IRA(s) set up and maintained in her name.

With respect to your second ruling request, although Taxpayer B could have rolled over distributions from IRAs X and Y into an IRA set up and maintained in her name she did not do so within the requisite 60-day period. Thus, the Service must determine if she is entitled to relief under Code section 408(d)(3)(I) and Rev. Proc. 2003-16.

With respect to said question, the Service notes that Taxpayers C and D received, in their capacities as co-trustees of Trust T, distributions from IRAs X and Y in order to consolidate the IRAs into one IRA account. As co-trustees, they were authorized to receive the distributions, but due to their inexperience with the rules governing IRAs they erred by transferring the IRAs into a non-IRA account. It has also been represented that Taxpayers C and D did not seek, and did not receive, advice from a tax professional prior to accomplishing said transfers, and that Taxpayer B was unaware that the funds from IRAs X and Y were being placed in a non-IRA account.

Taxpayer B was entitled to receive amounts distributed from IRAs X and Y into Trust T and, consistent with our conclusion to the first requested ruling, if Taxpayers C and D had given her the amounts distributed from IRAs X and Y to Trust T, she could have rolled said amounts into an IRA set up in her name. However, as noted above, she was not given said amounts and, additionally, was not told that the IRA distributions had occurred. In the absence of such notification, Taxpayer B could not have been aware that any action relating to said IRA distributions was necessary, and could not have accomplished timely rollovers of the above-referenced IRA distributions. In summary, responsibility for failing to accomplish timely rollovers of the amounts distributed from IRAs X and Y lay with Taxpayers C and D and not with Taxpayer B.

Thus, based on the above facts and representations, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distributions of amounts from IRA X and IRA Y (except as indicated below). Pursuant to this ruling letter, Taxpayer B is granted a period of 60 days as measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to the sum of the amounts distributed from IRA X and from IRA Y (except as indicated below), to another IRA (or IRAs) described in Code section 408(a) set up and maintained in her name. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the

200703047

contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

This letter assumes that IRAs X and Y were described within Code section 408(a) at all times relevant thereto. It also assumes that the rollover IRA (or IRAs) into which the calendar year IRA X and IRA Y distributions will be contributed will also be described in Code section 408(a).

Please note that, pursuant to Code section 408(d)(3)(E), this ruling letter does not authorize the rollover of amounts distributed from IRA X and IRA Y to the extent said amounts were required to be distributed with respect to calendar years beginning with calendar year and ending with the calendar year (the year of issuance of this letter ruling), if any. Thus, the amounts distributed from Account W, referenced above, which represented the calendar year and required distributions may not be rolled over into an IRA.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

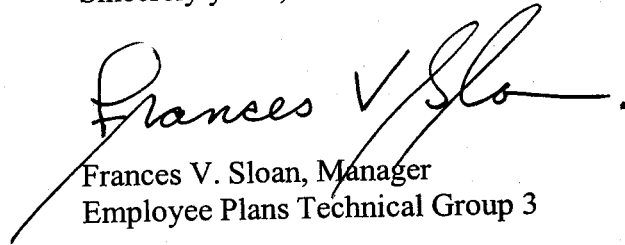
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, you are receiving the original of this letter ruling and your representative is receiving a copy of the letter ruling.

200703047

If you wish to inquire about this ruling, please contact Mr.
SE:T:EP:RA:T3, I.D. # at

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

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Notice of Intention to Disclose, Notice 437