

200704033



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UICs: 408.00-00
408.02-01
408.03-00

OCT 31 2006

LEGEND:

Decedent:

Taxpayer B:

Employee D:

Employee E:

Amount 1:

Amount 2:

Trust T:

Subtrusts U:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Month 1:

Company M:

Company N:

IRA X:

State W:

Court X:

County Y:

Court Order:

Dear :

This is in response to the request for letter rulings under sections 401(a)(9), and 408(d) of the Internal Revenue Code ("Code"), as supplemented by correspondence dated . The following facts and representations support your ruling request.

Decedent died on Date 2, 2003, a resident of State W. Decedent's date of birth was Date 1, 1918; thus, Decedent had attained his "required beginning date" as that term is defined in section 401(a)(9)(C) of the Code. At the time of his death, the Decedent owned an individual retirement account (IRA X), with Company M of which the named beneficiary was Trust T. Trust T was entirely amended and restated on Date 3, 2003. As of the date of Decedent's death, the value of IRA X was approximately Amount 1.

Decedent was survived by his spouse, Taxpayer B. After the death of Decedent, Taxpayer B mistakenly believed that she was the beneficiary of Decedent's IRA X. Operating under that assumption, and after a discussion with Employee E of Company N, Taxpayer B decided to transfer IRA X to an existing IRA that she maintained with Company N.

With the assistance of Employee D of Company N, on or about Date 4, 2004, Taxpayer B signed a Company N Customer Account Transfer Form pursuant to which she requested a transfer of IRA X into an account in her name with Company N. Company M refused to honor this request because the Company N account was not maintained in the name of Trust T. As a result, pursuant to Company M's request, on or about Date 5, 2004, Taxpayer B signed a second Customer Account Transfer Form on which she requested IRA X be transferred to an account with Company N maintained in the name of Trust T. Company M complied with this request.

It has been represented on your behalf that no representative of either Company M or Company N advised you that the transfer of IRA X from Company M to an account

in the name of Trust T with Company N gave rise to tax consequences in the year of transfer (2004).

During Month 1, 2005, Company M sent Taxpayer B a Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., showing a distribution from IRA X during calendar year 2004 in the amount of Amount 2. In preparing Taxpayer B's calendar year Federal Form 1040, Taxpayer A's accountant discovered that Taxpayer B had received a distribution from IRA X totaling Amount 2, and advised Taxpayer B accordingly. It has been asserted that this was the occasion on which Taxpayer B initially became aware that the calendar year 2004 transaction pursuant to which IRA X was transferred to a Trust T account with Company N gave rise to taxable consequences.

On or about Date 6, 2006, Trust T was modified by Court Order issued by Court X, County Y, State W, which is represented to be a court of competent jurisdiction. As a result of the Court Order, the following Paragraphs of Trust T, relevant to this ruling request, have been modified to read as follows:

Paragraph Fifth (D): "In calculating the amount of quarterly income to be paid from the Subtrusts U, distribution of Retirement Benefits (as defined in Subparagraph F) shall be disregarded.

Paragraph Fifth (F): "Retirement Benefits", in relevant part, includes ...an individual retirement arrangement under Code Sec. 408 or 408A...subject to the distribution rules of Code Sec. 401(a)(9).

1. Benefits Payable to Trust
 - a. The Trustees shall, to the maximum extent possible, allocate Retirement Benefits to Subtrust U.
 - b. Notwithstanding any other provision of this Agreement, to the extent that any Retirement Benefits are allocated to Subtrust U, the Trustees may (and shall, if requested to do so by Settlor's wife (Taxpayer B)) cause such Retirement Benefits to be paid directly to the Settlor's wife as beneficiary, or to another individual retirement account or retirement plan account in the Settlor's wife's name and may do so without the intervening step of payment to the Trustees.
2. Selection of Payout Schedule. Notwithstanding any other provision of this Agreement, the Trustees may (and shall if request to do so by the Settlor's wife in respect of assets allocated to Subtrust U) pay or direct payment of

Retirement Benefits in a lump sum or according to such other schedule as may be permitted by the retirement plan.

3. Selection of "Designated Beneficiary". In relevant part, this subsection does not give the Trustees of Trust T any authority to determine who, if anyone, is the "designated beneficiary", within the meaning of Code section 401(a)(9) of any Retirement Benefits to which Trust T may become entitled.

By its terms, the modification of Court Order related back to its date of restatement, Date 3, 2003.

It has been represented that the amounts distributed from IRA X during calendar year 2004 currently remain in a non-IRA account.

It has been represented that if the Internal Revenue Service issues a favorable response to the following ruling requests, Taxpayer B will contribute an amount not to exceed Amount 2 into one or more IRAs described in Code section 408(d)(3) below created and maintained in her name. Said transaction(s) will occur during calendar year 2006.

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

1. That, with respect to Taxpayer B, IRA X was not an inherited individual retirement account (IRA);
2. That, since IRA X was not an inherited IRA with respect to Taxpayer B, Taxpayer B was eligible to roll over, or transfer, IRA X into an IRA set up and maintained in her name; and
3. That Taxpayer B is granted a period, not to exceed 60 days as measured from the date of this ruling letter to contribute, by means of a rollover contribution, an amount not to exceed Amount 2 into an IRA 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.

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).

Code section 408(d)(3)(C) provides, generally, that amounts from an "inherited" IRA cannot be rolled over into another IRA. In general, an "inherited" IRA is an IRA maintained by an individual who acquired said IRA by reason of the death of another if the acquiring individual is not the surviving spouse of said other individual. In this case, as noted above, Taxpayer B is decedent's surviving spouse.

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

Code section 408(d)(3)(E) provides, in summary, that this paragraph does not apply to any amount required to be distributed in accordance with subsection (a)(6) or (b)(3) (Code section 401(a)(9) required distributions).

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.

The Preamble to the "Final" Income Tax Regulations under section 401(a)(9) of the Code provides, in relevant part, that a surviving spouse may elect to treat an IRA of his/her deceased spouse as his/her own if the surviving spouse is the sole beneficiary of the IRA with an unlimited right to withdraw from the IRA. A surviving spouse may not elect to treat an IRA as his/her own if a trust is the beneficiary of the IRA. However, a surviving spouse may be eligible to roll over a distribution from an IRA of a decedent if the spouse actually receives the distribution regardless of whether the spouse is the sole beneficiary of the IRA (See Preamble at 67 Federal Register 18992-18993 (April 17, 2002)).

The "Preamble" to the "Final" Regulations also provides that a surviving spouse may not elect to treat as her own the required distribution (to the extent not taken prior to death) for the calendar year of the IRA owner's death.

With respect to your ruling requests, generally, if either a decedent's qualified plan assets or a decedent's IRA assets pass through a third party, e.g. an estate or a trust, and then are distributed to the decedent's surviving spouse, said spouse will be treated as acquiring them from the third party and not from the decedent. Thus, generally, said surviving spouse will not be eligible to roll over the qualified plan proceeds into her own IRA.

However, in certain situations the Service does not apply the general rule. With respect to the rule's application in this case, the language of Trust T, as amended and modified by Court Order, gives Taxpayer B the right to request payment of all of Decedent's retirement benefits, including IRA X, and that payment of IRA X may be made to Taxpayer B in the form of a lump sum. Thus, Taxpayer B had the absolute right to receive IRA X and control over the disposition of IRA X, and the disposition of IRA X lay outside the control of anyone other than Taxpayer B.

As a result of the above, the Service will not apply the general rule (above) in this case. Therefore, with respect to your first two ruling requests, we conclude as follows:

1. That, with respect to Taxpayer B, IRA X was not an inherited individual retirement account (IRA); and
2. That, since IRA X was not an inherited IRA with respect to Taxpayer B, Taxpayer B was eligible to roll over, or transfer, IRA X into an IRA set up and maintained in her name.

With respect to your third ruling request, we note that Taxpayer B's failure to complete a timely rollover of Amount 2 distributed from IRA X was due to her reliance on the advice of employees of Company M and Company N which advice did not inform her correctly as to the consequences of her withdrawing Amount 2 from IRA X and transferring said amount into an account set up and maintained in the name of Trust T for her benefit.

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

3. That Taxpayer B is granted a period, not to exceed 60 days as measured from the date of this ruling letter, to contribute, by means of a rollover contribution, an amount not to exceed Amount 2 (except as noted below) into an IRA (or IRAs) set up and maintained in her name.

This ruling letter is based on the assumption that IRA X met the requirements of Code section 408(a) at all times relevant thereto. Furthermore, it assumes that the IRA (or IRAs) into which Taxpayer B will contribute Amount 2 (or a portion thereof) will also meet the requirements of Code section 408(a) at all times relevant thereto. It also assumes that Trust T is valid under the laws of State W as represented. Additionally, it assumes that Court Order is valid under the laws of State W as represented.

Please note that this letter does not authorize the rollover of distributions required either to have been made or to be made with respect to calendar years 2003-2006.

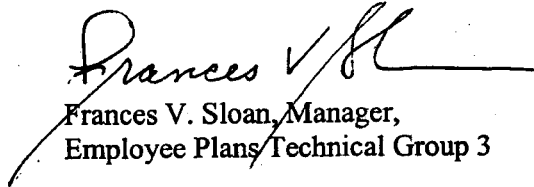
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

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.

A copy of this letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact
Esquire (ID:) at either (Phone) or (FAX).
Please address all correspondence to SE:T:EP:RA:T:3.

Sincerely yours,


Frances V. Sloan, Manager,
Employee Plans Technical Group 3

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose