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

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

MAY - 5 2008

UICs: 408.02-01
408.03-00

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Attorney C:

Trust T:

Account U:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Month 1:

Year 1:

Year 2:

State U:

IRA X:

Company Z:

Amount 1:

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 rulings 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, 1937, died on Date 2, 2003, a resident of State U, without having attained age 70 ½. Taxpayer A was survived by his wife, Taxpayer B, whose date of birth was Date 3, 1938. At his death, Taxpayer A maintained an individual retirement arrangement ("IRA"), IRA X, with Company Z. Trust T, dated Date 4, 2001, was the named beneficiary of Taxpayer A's IRA X. Taxpayer B is the named trustee of Trust T.

Article 17.Section 3v of Trust T, in relevant part, provides that Taxpayer B, as the Trust T trustee, has the sole discretion to withdraw any or all of an IRA balance, or "to direct that the ...individual retirement account be paid directly to a beneficiary of the Trust who is entitled to income or corpus of the Trust".

Article Ten, Section 1, provides, in relevant part, that Taxpayer B is an income and principal beneficiary of Trust T.

In Month 1, Year 1, Taxpayer B, through her attorney, Attorney C, contacted Company Z and requested Company Z to re-title IRA X to read:" Taxpayer A IRA f/b/o Taxpayer B, Trustee of Trust T". Instead of following Attorney C's instructions, on or about Date 5, Year 1, Company Z distributed Amount 1 from Taxpayer A's IRA X and placed Amount 1 into Account U, a non-IRA account. It has been represented on your behalf that neither Taxpayer B nor Attorney C was advised of the Date 5, Year 1 distribution from IRA X.

On or about Date 6, Year 1, which date was after Date 5, Year 1, Attorney C wrote Company Z and re-requested Company Z to re-title IRA X to read as indicated about. It has been represented that, at the time of the Date 6, Year 1 letter, Attorney C was unaware that Company Z had made the Date 5, Year 1, distribution from IRA X. It has also been represented that Taxpayer B did not. become aware that Amount 1 had been distributed from IRA X until she received a calendar Year 1 Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Contracts, etc. in Year 2.

Year 1 is an "open" tax year.

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 distributed from IRA X 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 is granted a period not to exceed 60 days as measured from the date of this letter ruling to roll over Amount 1 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 ("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.

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.

The facts of this ruling request indicate 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 that relevant provisions of Trust T provide that Taxpayer B, as the trustee of Trust T, had the authority to pay herself any portion or all of IRA X. Thus, under the facts of this case, IRA X could 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 IRA X into an IRA (or more than one IRA) set up and maintained in her name.

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

1. That Taxpayer B was eligible to roll over Amount 1, distributed from IRA X, 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 the Year 1 distribution from IRA X 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 Internal Revenue Service notes that the Company Z did not follow the instruction of Taxpayer B, as provided to Company Z by Attorney C, with respect to the amounts held in Taxpayer A's IRA X at the death of Taxpayer A. In short, the Service notes that the distribution from IRA X was made when Company Z completely disregarded Taxpayer A's instructions with respect to the IRA X assets and, as a result, made an unsolicited and unwanted distribution from IRA X.

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 distribution of Amount 1 from IRA X. 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 not to exceed Amount 1, the amount distributed from IRA X, 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 contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

This letter assumes that IRA X was described within Code section 408(a) at all times relevant thereto. It also assumes that the rollover IRA(or IRAs) into which Amount 1 will be contributed will also be described in Code section 408(a).

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.

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

Sincerely yours,

Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

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Notice of Intention to Disclose, Notice 437