Internal Revenue Service

Department of the Treasury

200052045

Washington, DC 20224

UIC: 408.06-00
408.00-00

Contact Person:

Telephone Number:

In Reference to:
T:EP:RA:T3 ID: 50-03192

Date:

OCT 3 2000

LEGEND:

Taxpayer A:

Taxpayer B:

IRA C:

Date 1:

Date 2:

Date 3:

Company M:

State N.

Court O:

Amount 1:

Dear :

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

Taxpayer A, whose date of birth was Date 1, died on Date 2, a resident of State N, survived by her spouse, Taxpayer B. Taxpayer A had not attained age 70 ½ as of her date of death, and Taxpayer B has not attained age 70 1/2.

At her death, Taxpayer A owned IRA C, an individual retirement account which your authorized representative asserts meets the requirements of Code section 408, with Company M. Prior to her death, Taxpayer A named her estate as the beneficiary of her IRA C. As of Taxpayer A's date of death, the value of her IRA C was Amount 1.

The terms of Taxpayer A's last will and testament provide, in part, that Taxpayer B is entitled to ½ of the residuary estate of Taxpayer A. Additionally, the terms of Taxpayer A's will provide, in relevant part, that Taxpayer B was nominated as the sole personal representative of the estate of

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Taxpayer A. By Letters Testamentary dated Date 3, issued by Court O, State N, a court of competent jurisdiction, Taxpayer B was named the personal representative of the estate of Taxpayer A.

As personal representative of the estate of Taxpayer A, Taxpayer B intends to request from Company M a distribution of a portion of Taxpayer A's IRA C. Said portion, which will total between 50% and 67% of Amount 1 (Bequest 1), will satisfy Taxpayer B's residuary bequest under Taxpayer A's last will and testament. Upon receipt of Bequest 1, Taxpayer B, as personal representative of Taxpayer A's estate, will pay said amount to Taxpayer B, as residuary beneficiary of Taxpayer A's estate. Taxpayer B will then roll over Bequest 1 into an individual retirement arrangement (IRA) set up and maintained in his name. The rollover will be accomplished no later than the 60th day following the date on which Bequest 1 was received by Taxpayer B as the personal representative of Taxpayer A's estate.

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

(1) That, to the extent necessary to satisfy Taxpayer B's residuary bequest under Taxpayer A's will, IRA C is not an inherited IRA as that term is defined in Code 408(d)(3)(C)(I), with respect to Taxpayer B;

(2) that Taxpayer B may be treated as a distributee or payee of IRA C; and

(3) that, to the extent that the amounts standing in IRA C are timely rolled over to an IRA set up and maintained in the name of Taxpayer B, said rolled over amount will not be included in Taxpayer B's gross income for the year in which rolled over (or the year in which distributed from IRA C, if different).

With respect to your ruling requests, Code section 408(d)(1) 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.

Code section 408(d)(3) 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).

Code section 408(d)(3)(A)(i) 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.

Code section 408(d)(3)(C)(i) 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.

Code section 408(d)(3)(C)(ii) 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 Code 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 1.408-8 of the Proposed Income Tax Regulations, Q&A A-4, provides that a surviving spouse is the only individual who may elect to treat a beneficiary's interest in an IRA as the beneficiary's own account. If a surviving spouse makes such an election, the spouse's interest in the account would then be subject to the distribution requirements of section 401(a)(9)(A) rather than those of section 401(a)(9)(B).

Q&A A-4 further provides, in pertinent part, that an election will be considered to have been made by a surviving spouse if either of the following occurs: (1) any required amounts in the account (including any amounts that have been rolled over or transferred, in accordance with the requirements of section 408(d)(3)(A)(i), into an IRA for the benefit of such surviving spouse) have not been distributed within the appropriate time period applicable to the decedent under section 401(a)(9)(B), or (2) any additional amounts are contributed to the account (or to the account or annuity to which the surviving spouse has rolled such amounts over, as described in (1) above) which are subject, or deemed to be subject, to the distribution requirements of section 401(a)(9)(A). The result of such an election is that the surviving spouse shall then be considered the individual for whose benefit the trust is maintained.

Q&A A-4 of section 1.408-8 of the proposed regulations provides that if a surviving spouse of an employee rolls over a distribution from a qualified plan, such surviving spouse may elect to treat the IRA as the spouse's own IRA in accordance with the provisions in A-4.

Q&A A-4 of section 1.408-8 of the proposed regulations provides that a surviving spouse may elect to treat an IRA of her deceased spouse as her own. Q&A A-4 lists actions by which a surviving spouse makes said election. However, Q&A A-4 does not provide the exclusive methods by which a surviving spouse can elect.

Generally, if the proceeds of a decedent's IRA are payable to an estate, are made payable to the personal representative of the estate, and are then paid by the personal representative of the estate to the surviving spouse of the decedent who subsequently rolls all or a portion thereof to an IRA set up

and maintained in the name of the surviving spouse, said surviving spouse shall be treated as having received the IRA proceeds from the estate and not from the decedent. Accordingly, such surviving spouse shall, generally, not be eligible to roll over (or have transferred) said distributed IRA proceeds into her own IRA.

However, in a case where an estate is the beneficiary of a decedent's IRA, the surviving spouse is the sole personal representative of the estate as well as a residuary beneficiary of the estate, the surviving spouse, as personal representative of the decedent's estate, requests payment of the IRA assets in an amount sufficient to, at least partially, satisfy the spouse's residuary bequest under the decedent's will, and, as personal representative, pays said IRA amounts to the surviving spouse in order to, at least partially, satisfy his residuary bequest under decedent's will, the surviving spouse will be treated as having received the IRA proceeds from the decedent and not from the estate.

In this case, Taxpayer B is the personal representative of Taxpayer A's estate and a residuary beneficiary of her estate. By means of the course of action described above, Taxpayer B will receive IRA C assets sufficient to satisfy, at least partially, his residuary bequest under Taxpayer A's will, and will then roll over the IRA C assets he receives as residuary beneficiary into an IRA set up and maintained in his name. Under the circumstances presented herein, the Service will not apply the general rule described above.

Therefore, with respect to your ruling requests, we conclude as follows:

(1) That, to the extent necessary to satisfy Taxpayer B's residuary bequest under Taxpayer A's will, IRA C is not an inherited IRA as that term is defined in Code section 408(d)(3)(C)(i), with respect to Taxpayer B;

(2) that Taxpayer B may be treated as a distributee or payee of IRA C; and

(3) that, to the extent that the amounts standing in IRA C are timely rolled over into an IRA set up and maintained in the name of Taxpayer B, the said rolled over amount will not be included in Taxpayer B's gross income for the year in which rolled over (or, if different, for the year in which distributed from IRA C).

This ruling letter assumes that IRA C is or was qualified under Code section 408 at all times relevant thereto. It also assumes that the IRA to be set up by Taxpayer B, which will hold the amounts rolled over from IRA C, will also meet the requirements of Code section 408 at all times relevant thereto.

This ruling is directed solely 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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Pursuant to a power of attorney on file in this office, the original of this letter ruling is being sent to your authorized representative.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Manager,
Employee Plans
Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of letter ruling
Form 437

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