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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

UICs: 401.06-00
401.06-02
408.03-00
4973.01-00
4974.00-00

Contact Person:

Telephone Number:

In Reference to:

T:EP:RA:T3 ID: 50-03192

Date:

APR - 4 2001

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

IRA T:

IRA U:

IRA V:

IRA W:

IRA X:

IRA Y:

IRA Z:

IRA S:

Date 1:

Date 2:

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Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Date 8:

Date 9:

Date 10:

Sum 1:

Sum 2:

Sum 3:

Sum 4:

Dear

This is in response to the , request for letter rulings submitted on your behalf by your authorized representative, as supplemented by correspondence dated , in which you, through your authorized representative, request a series of letter rulings under sections 408(d), 401(a)(9), and 4973 of the Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 1, 1925, died on Date 2, 1999, having attained age 70 ½. Taxpayer A was survived by his wife, Taxpayer B, whose date of birth was Date 3, 1929. Pursuant to the will of Taxpayer A, Taxpayer B was the sole executrix of Taxpayer A's estate.

The provisions of Taxpayer A's will provided, in relevant part, that after a bequest, not to exceed $250,000, to Taxpayer C, Taxpayer A's daughter, the rest, residue, and remainder of Taxpayer A's estate was to go to Taxpayer B if she survived Taxpayer A. Taxpayer B survived Taxpayer A.

At his death, Taxpayer A maintained seven individual retirement arrangements (IRAs), IRAs T through Z. The estate of Taxpayer A was the beneficiary of his IRAs T and U. Taxpayer B was the named beneficiary of his IRAs V through Z.

During calendar year 1999, and prior to his death on Date 2, 1999, Taxpayer A received a distribution from his IRA X in the amount of Sum 4 which, your authorized representative asserts, did not satisfy the requirements of section 401(a)(9) of the Internal Revenue Code which are applicable to IRAs pursuant to Code section 408(a)(6). Taxpayer A received no distribution during calendar year 1999 from either IRA V, IRA W, IRA Y, or IRA Z.

During calendar year 1999, Taxpayer B did not receive any distribution from any of the IRAs (IRAs T, U, V, W, X, Y, and Z) referenced above which were maintained by Taxpayer A at his death.

On or about Date 5, 2000, Taxpayer B received a distribution in the amount of Sum 1 from IRA Z of which she was the beneficiary as noted above. On or about Date 6, 2000, the proceeds of IRA T, in the amount of Sum 2, were received by the estate of Taxpayer A on behalf of Taxpayer B, the residuary beneficiary of Taxpayer A's estate. Additionally, on or about Date 6, 2000, the proceeds of IRA U, in the amount of Sum 3, were received by the estate of Taxpayer A on behalf of Taxpayer B, the residuary beneficiary of Taxpayer A's estate.

Taxpayer B died on Date 4, 2000, which date was after both Date 5 and Date 6. On or about Date 7, 2000, Taxpayer C was appointed successor executrix of the estate of Taxpayer A. On or about Date 8, 2000, Taxpayer C was appointed the executrix of the estate of Taxpayer B.

Prior to her date of death, Date 4, 2000, Taxpayer B had not received any distribution during calendar year 2000 from either IRA V, IRA W, IRA X, or IRA Y.

On or about Date 9, 2000, which date was after the date of death of Taxpayer B, Taxpayer C, in her capacity of executrix of the estate of Taxpayer B, established IRA S in the name of Taxpayer B, deceased, for the benefit of Taxpayer C, named beneficiary thereof. Additionally, on or about Date 9, 2000, Taxpayer C, in her capacity of executrix of the estate of Taxpayer B, contributed, as an attempted rollover, into IRA S the proceeds received by Taxpayer B on or about Date 5, 2000, in the amount of Sum 1, from IRA Z.

On or about Date 10, 2000, which date was after the date of death of Taxpayer B, Taxpayer C, in her capacities of executrix of the estate of Taxpayer A and of executrix of the estate of Taxpayer B, contributed, as attempted rollover contributions, into IRA S, the amounts which had been distributed from IRAs T and U to the estate of Taxpayer A on Date 6, 2000, as noted above.

Your authorized representative has asserted, on your behalf, that, prior to her death, Taxpayer B had not named or designated a beneficiary with respect to her interests, if any, in IRAs V through Z.

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

1. That the proceeds of IRAs T and U that were paid to the estate of Taxpayer A after Taxpayer A's death and that were allocated to Taxpayer B, Taxpayer A's (then) surviving spouse as the residuary beneficiary of Taxpayer A's estate, did not represent "inherited IRAs" as that term is used in Code section 408(d)(3);

2. that the Service's response to ruling request (1), above, is not affected by Taxpayer B's death prior to the distributions from IRAs T and U being received by her from the estate of Taxpayer A;

3. that pursuant to Code section 408(d)(3), the estate of Taxpayer A is not required to include, as income for Federal income tax purposes, the proceeds from IRAs T and U that were paid to the estate of Taxpayer A, since said proceeds were rolled over by Taxpayer C, as executrix of the estate of Taxpayer A, into IRA S, an IRA set up and maintained in the name of Taxpayer B within 60 days of the date that said proceeds were distributed from IRAs T and U to Taxpayer A's estate;

4. that the estate of Taxpayer A is not taxed on the amounts distributed from either IRA T or IRA U since said proceeds were rolled over into IRA S by Taxpayer C, in her capacity of executrix of the estate of Taxpayer A, as noted above;

5. that favorable responses to ruling requests 3 and 4 are not precluded by the actions of Taxpayer C, as executrix of the estates of Taxpayers A and B, in creating IRA S, an IRA maintained in the name of Taxpayer B, who was deceased at the time of IRA S's creation, which IRA creation occurred within 60 days of the date of the distributions from IRA T and IRA U to the estate of Taxpayer A, as noted above;

6. that, assuming the Internal Revenue Service does not issue favorable responses to letter ruling requests 3 through 5 (above), then, to the extent of the amounts originally distributed from IRAs T and U to the estate of Taxpayer A, and subsequently contributed to IRA S by Taxpayer C in her capacity of estate executrix as attempted rollovers, said amounts may be withdrawn from IRA S and not be subject to taxation as ordinary income

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under Code section 408(d)(1) pursuant to Code section 408(d)(4) as long as said withdrawal occur within the time frame referenced in Code section 408(d)(4);

7. in the event that ruling request number 6 (above) is responded to favorably, then any amount withdrawn from IRA S that exceeds the amount originally contributed to IRA S as attempted rollovers will be taxable to the payee or distributee, as the case may be, as ordinary income pursuant to Code section 408(d)(1);

8. in the event that ruling request number 6 (above) is responded to favorably, then if the amount distributed from IRA S attributable to the attempted rollovers of the amounts distributed from IRAs T and U to the estate of Taxpayer A is less than the amount originally attributed to the amounts distributed from IRAs T, and U, the difference may be treated as a loss by the payee or distributee as the case may be;

9. that Taxpayer B is deemed to have elected to treat IRAs V, W, X, Y, and Z, which were maintained by Taxpayer A at his death, as her own IRAs as of December 31, 1999;

10. that Taxpayer B's required beginning date with respect to IRAs V, W, X, Y, and Z, after said IRAs are treated as her own, was December 31, 2000;

11. that, with respect to IRAs V, W, X, Y, Z, Taxpayer B, whose date of death was Date 4, 2000, died prior to her "required beginning date", as that date is defined in Code section 401(a)(9)(C);

12. that, with respect to IRAs V, W, X, Y, and Z, which are treated as Taxpayer B's own IRAs effective December 31, 1999, the estate of Taxpayer B may receive Code section 401(a)(9) minimum required distributions no later than December 31, 2005, pursuant to Code section 401(a)(9)(B)(ii), without being subject to the excise tax imposed by Code section 4974;

13. that, pursuant to Code section 408(d)(3), neither Taxpayer B, deceased, nor the estate of Taxpayer B is required to include as ordinary income the proceeds of IRA Z, in the amount of Sum 1, which were rolled over into IRA S, an IRA maintained in the name of Taxpayer B, by Taxpayer C acting in her capacity of executrix of the estate of Taxpayer B;

14. that a favorable response to ruling request 13 is not precluded by the action of Taxpayer C, in her capacity of executrix of the estate of Taxpayer B, of creating IRA S, an IRA in the name of Taxpayer B, deceased, for the benefit

of Taxpayer C, which IRA creation occurred within 60 days of the date of the distribution of Sum 1 from IRA Z to Taxpayer B;

15. that, assuming the Internal Revenue Service does not issue favorable responses to letter ruling requests 13-14 (above), then, to the extent of the amounts contributed to IRA S by Taxpayer C as executrix of the estate of Taxpayer B as an attempted rollover, which amounts had been distributed from IRA Z to Taxpayer B, said amounts may be withdrawn from IRA S and not be subject to taxation as ordinary income under Code section 408(d)(1) pursuant to Code section 408(d)(4) as long as said withdrawal occur within the time frame referenced in Code section 408(d)(4);

16. in the event that ruling request number 15 (above) is responded to favorably, then any amount withdrawn from IRA S that exceeds the amount originally contributed to IRA S as an attempted rollover of the IRA Z distribution will be taxable to the payee or distributee, as the case may be, as ordinary income pursuant to Code section 408(d)(1);

17. in the event that ruling request number 15 (above) is responded to favorably, then if the amount distributed from IRA S attributable to the attempted rollover of the amount distributed from IRA Z to Taxpayer B is less than the amount originally distributed from IRA Z, the difference may be treated as a loss by the payee or distributee as the case may be; and

18. that, if the amounts contributed to IRA S as an attempted rollover of amounts initially distributed from IRA Z to Taxpayer B, and earnings thereon, are withdrawn from IRA S no later than the due date of the calendar year 2000 Federal Income Tax Return (including extensions) , then said contributed amounts will not be subject to the excise tax imposed by Code section 4973.

With respect to your ruling requests, 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 the IRA trust is maintained.

Code section 401(a)(9)(A) provides, in general, that a trust will not be considered qualified unless the plan provides that the entire interest of each employee-

(i) will be distributed to such employee not later than the required beginning date, or

(ii) will be distributed, beginning not later than the required

beginning date, over the life of such employee or over the lives of such employee and a designated beneficiary or over a period not extending beyond the life expectancy of such employee and a designated beneficiary.

Code section 401(a)(9)(B)(i) provides that, where distributions have begun over life expectancy (cies) in accordance with subparagraph (A)(ii), a trust shall not constitute a qualified trust under this section unless the plan provides that, if the employee dies before his entire interest has been distributed to him, the remaining portion of such interest will be distributed at least as rapidly as under the method of distribution being used under subparagraph (A)(ii) as of the date of death.

Code section 401(a)(9)(B)(ii) provides, in general, that if an employee dies prior to the date required distributions have begun without having designated a beneficiary of his plan (IRA) interest, distribution of such plan or IRA interest must be made within 5 years of the death of the employee (IRA holder).

Code section 401(a)(9)(B)(iii) provides, in general, for an exception to the above 5-year rule. The exception provides that distributions may be made over the life (or life expectancy) of a designated beneficiary as long as distributions commence no later than one year after the date of the employee's death or such later date as the Secretary may be regulations prescribe.

Section 401(a)(9)-1 of the Proposed Income Tax Regulations, Question and Answer C-2 provided, in general, that there will be compliance with the above referenced five-year rule as long as distribution of the employee's (IRA holder's) entire interest is made by December 31 of the calendar year which contains the fifth anniversary of the death of the employee or IRA holder.

Section 401(a)(9)-1 of the Proposed Income Tax Regulations, Question and Answer C-3 provided, in general, that there will be compliance with the above referenced exception to the five-year rule as long as distribution of the employee's (IRA holder's) entire interest is made to a non-spousal beneficiary beginning no later than December 31 of the calendar year following the calendar year of the employee's (IRA holder's) death.

Section 401(a)(9)(C) of the Code provides, in relevant part, that, for purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the calendar year in which the employee (IRA holder) attains age 70 ½.

Section 401(a)(9)-1 of the Proposed Income Tax Regulations, Questions and Answers D-1 and D-2 provided, in general, that designated beneficiaries are individuals who are designated by either a plan participant or IRA holder to receive benefits under a plan or from an IRA. Such designation may be made pursuant to plan provisions or by means of an affirmative election by the employee or IRA holder, or, in limited

circumstances, by the surviving spouse of an employee or IRA holder, which election specifies the beneficiary.

Section 401(a)(9)-1 of the Proposed Income Tax Regulations, Question and Answer D-2A provided, in pertinent part, that an estate may not be a designated beneficiary for purposes of Code section 401(a)(9).

Section 401(a)(9)-1 of the Proposed Income Tax Regulations, Question and Answer D-3, provided that for purposes of calculating the distribution period for distributions that begin prior to death, the designated beneficiary will be determined as of the plan participant's (IRA holder's) required beginning date.

Section 401(a)(9)-1 of the proposed regulations, Q&A E-5(a), provided, in general, that if more than one individual is designated as a beneficiary with respect to an employee (IRA holder) as of the applicable date for determining the designated beneficiary, the designated beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the Code section 401(a)(9) distribution period.

Section 401(a)(9)-1 of the proposed regulations, Q&A F-1(a), provided that where an employee's benefit is in the form of an individual account and is to be distributed over a period not extending beyond the life expectancy of the employee or the joint life and last survivor expectancy of the employee and his designated beneficiary, the amount required to be distributed for each calendar year, beginning with the first calendar year for which distributions are required and for each succeeding calendar year, must be at least equal to the quotient obtained by dividing the employee's benefit by the applicable life expectancy.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A F-1(d), provided that the term "applicable life expectancy" means the life expectancy (or the joint and last survivor expectancy) determined in accordance with E-1 through E-5 of the proposed regulations, reduced by one for each calendar year which has elapsed since the date on which the life expectancy (or joint and last survivor expectancy) was calculated. However, pursuant to E-6 through E-8, life expectancy is recalculated, the applicable life expectancy will be the life expectancy so recalculated.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A F-3A, provided, generally, that, with respect to individual account plans from which distributions have commenced prior to the employee's death, post death distributions will comply with the "at least as rapidly as under the method of distribution being used under section 401(a)(9)(A)(ii) rule" if said distributions are made in accordance with Q&A F-1.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A E-8 provided, in pertinent part, that the life expectancy of a non-spouse beneficiary may not be

recalculated. Q&A E-8 also provides, in pertinent part, that if the life expectancy of either a plan participant (IRA holder) or his beneficiary is being recalculated, the recalculated life expectancy is reduced to "0" at the end of the calendar year following the calendar year of the IRA holder's or beneficiary's death.

Code section 4974(a) provides, in general, that if the amount distributed from either a qualified retirement plan or an IRA during the taxable year of the payee is less than the amount required to be distributed under Code section 401(a)(9), then there is imposed a tax equal to 50 percent of the amount by which said minimum required distribution exceeds the actual amount distributed during said taxable year.

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)(4) provides, in general, that paragraph (1) does not apply to the distribution of any contribution paid during a taxable year to an IRA or for an individual retirement annuity if-

(A) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such individual's return for such taxable year,
(B) no deduction is allowed under section 219 with respect to such contribution, and
(C) such distribution is accompanied by the amount of net income attributable to such contribution.

In the case of such a distribution, for purposes of section 61, any net income described in paragraph (C) shall be deemed to have been earned and receivable in the taxable year in which such contribution is made.

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, provided 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 provided, 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 provided that a surviving spouse may elect to treat an IRA of her deceased spouse as her own. Q&A A-4 listed actions by which a surviving spouse made said election. However, Q&A A-4 did not provide the exclusive methods by which a surviving spouse so elected.

Code section 4973(a) provides, in general, that for each taxable year a tax in the amount of 6 percent will be imposed on the amount of an excess contribution made to an IRA described in Code section 408(a) or an individual retirement annuity described in Code section 408(b).

Code section 4973(b) provides, in pertinent part, that, for purposes of this subsection, any contribution which is distributed from an IRA or individual retirement annuity in a distribution to which section 408(d)(4) applies shall be treated as an amount not contributed.

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With respect to your first two ruling requests, Taxpayer A's estate was the named beneficiary of Taxpayer A's IRAs T and U. Taxpayer B was the residual beneficiary of Taxpayer A's estate and, during her lifetime, the sole executrix of Taxpayer A's estate.

As a general rule, if amounts are distributed from an IRA to the estate of a deceased IRA holder and subsequently paid to the spouse as the beneficiary of said estate, the spouse shall be treated as having received the IRA proceeds from the estate and not directly from the IRA. In such a case, the surviving spouse will not be eligible to either roll over the IRA proceeds into an IRA set up and maintained in her name or treat said IRA as her own IRA.

However, in this case, since Taxpayer B, the surviving spouse of Taxpayer A was the sole executrix with authority to allocate assets in Taxpayer A's estate to the beneficiaries and was also the sole beneficiary of said estate to whom she, as executrix, allocated the proceeds of IRAs T and U, the Service will not apply the general rule.

Thus, with respect to your first two ruling requests, the Service concludes as follows:

1. That the proceeds of IRAs T and U that were paid to the estate of Taxpayer A after Taxpayer A's death and that were allocated to Taxpayer B, Taxpayer A's (then) surviving spouse as the residuary beneficiary of Taxpayer A's estate, did not represent "inherited IRAs" as that term is used in Code section 408(d)(3);

2. that the Service's response to ruling request (1), above, is not affected by Taxpayer B's death prior to the distributions from IRAs T and U being received by her from the estate of Taxpayer A.

With respect to your third through fifth ruling requests, as noted above, IRAs T and U were not inherited IRAs, as that term is used in Code section 408(d)(3), with respect to Taxpayer B. Thus, Taxpayer B was eligible to either roll over the IRA proceeds into an IRA set up and maintained in her name or treat said IRAs as her own IRA. However, as noted above, Taxpayer B died prior to her doing so.

The ability of a surviving spouse to either roll over the IRA of her deceased husband into an IRA set up and maintained in her name or to treat said IRA of the decedent as her own is personal to the surviving spouse and may not be exercised either by the executrix of the decedent's estate or by the executrix of her estate after her death.

Thus, with respect to your third through fifth ruling request, and with regard to the Service's conclusions to your initial two requests (above), the Service concludes as follows:

3. that the estate of Taxpayer A is required to include, as income for Federal income tax purposes, the proceeds from IRAs T and U that were paid to the estate of Taxpayer A, since said proceeds were not rolled over, as that term is used in Code section 408(d)(3), by Taxpayer C, as executrix of the estate of Taxpayer A, into IRA S, an IRA set up and maintained in the name of Taxpayer B within 60 days of the date that said proceeds were distributed from IRAs T and U to Taxpayer A's estate;

4. that the estate of Taxpayer A, the beneficiary of IRAs T and U, is taxed on the amounts distributed from said IRAs since the proceeds of the IRAs were not rolled over, as that term is used in Code section 408(d)(3), by Taxpayer C, in her capacity of executrix of the estate of Taxpayer A, into IRA S; and

5. that the Service's unfavorable responses to ruling requests 3 and 4 considered the actions of Taxpayer C, as executrix of the estates of Taxpayers A and B, in creating IRA S, an IRA maintained in the name of Taxpayer B, who was deceased at the time of IRA S's creation, which IRA creation occurred within 60 days of the date of the distributions from IRA T and IRA U to the estate of Taxpayer A, as noted above

With respect to your sixth ruling request, as noted above, the proceeds of IRAs T and U were not rolled over into IRA S since Taxpayer C lacked authority to accomplish such a rollover. Thus, the contribution of said proceeds to IRA S resulted in excess contributions to the IRA. As such, upon distribution to the recipient or payee, the (excess) contributions will be subject to the normal taxation rules of IRA distributions found at Code section 408(d)(1).

As noted above, the contribution to IRA S of the proceeds of IRAs T and U occurred during calendar year 2000. The due date for filing a Federal Income Tax Return with respect to calendar year 2000 is April 16, 2001 (excluding extensions). Code section 408(d)(4) provides, in general, that excess contributions to an IRA made during calendar year 2000 may be withdrawn from the IRA by such due date (with earnings attributable thereto) without such distribution from the "rollover IRA" being subject to taxation under Code section 408(d)(1).

Thus, with respect to your sixth ruling request, the Service concludes as follows:

6. that, since the Internal Revenue Service has not issued favorable responses to letter ruling requests 3 through 5 (above), then, to the extent of the amounts originally distributed from IRAs T and U to the estate of Taxpayer A, and subsequently contributed to IRA S by Taxpayer C in her capacity of estate executrix as attempted rollovers, said amounts may be withdrawn from IRA S and not be subject to taxation as ordinary income under Code section 408(d)(1)

pursuant to Code section 408(d)(4) as long as said withdrawal occur within the time frame referenced in Code section 408(d)(4).

Please note that the Service's response to your sixth ruling request concluded that the excess contribution to IRA S will not be subject to Code section 408(d)(1) when distributed from IRA S as long as there is satisfaction of the requirements of Code section 408(d)(4). It does not conclude that these amounts were not subject to Code section 408(d)(1) when originally distributed from either IRA T or IRA U.

With respect to your seventh ruling request, based on the law and rationale above, the Service concludes as follows:

7. since the Service has responded favorably to ruling request number 6 (above), then any amount withdrawn from IRA S that exceeds the amount originally contributed to IRA S as attempted rollovers will be taxable to the payee or distributee, as the case may be, as ordinary income pursuant to Code section 408(d)(1).

With respect to your eighth ruling request, except as specifically provided in Code section 408(d), an IRA holder has no "basis" in his or her IRA. In general, a basis in an IRA is created when after-tax contributions are made to an IRA in accordance with Code section 408(o).

In this case, the contribution made to IRA S of amounts previously distributed from IRAs T and U do not constitute non-deductible contributions to IRA S, as that term is used in Code section 408(o) if said contribution is removed from IRA S pursuant to Code section 408(d)(4). Thus, since they do not constitute non-deductible IRA contributions, they cannot give rise to a "basis" in IRA S.

Thus, with respect to your eighth ruling request, the Service concludes as follows:

8. although the Service has ruled favorably with respect to ruling request number 6 (above), if the amount distributed from IRA S attributable to the attempted rollovers of the amount(s) distributed from IRAs T and U to the estate of Taxpayer A is less than the amounts initially distributed from IRAs T, and U, the difference may not be treated as a loss by the payee or distributee of IRA S as the case may be.

With respect to your ninth through 12th ruling requests, as noted above, Taxpayer A died during calendar year 1999 owning IRAs V through Z. As of his death, Taxpayer A had passed his "required beginning date" as that term is defined in Code section 401(a)(9)(C), but had not received his Code section 401(a)(9) required distributions from said IRAs V through Z. Taxpayer B, Taxpayer A's surviving spouse, was the

named beneficiary. As noted above, Taxpayer B also did not receive any distributions from said IRAs V through Z during calendar year 1999.

Pursuant to section 1.408-8 of the proposed regulations, Q&A 4 (above), Taxpayer B's not receiving any distributions from any of IRAs V through Z during calendar year 1999 constituted an election on her part to treat said IRAs as her own as of the end of said calendar year. Furthermore, as of the end of 1999, Taxpayer B had a balance in her IRAs for purposes of computing required distributions with respect to calendar year 2000. Finally, since Taxpayer B had to begin receiving distributions from said IRAs V through Z, which she converted to her own IRAs by the end of calendar year 2000, she had to have designated beneficiaries with respect to said IRAs by the last day of the 2000 calendar year. As noted above, she did not do so.

Thus, based on the above, the Service concludes as follows with respect to your ninth through 12th ruling requests:

9. that Taxpayer B is deemed to have elected to treat IRAs V, W, X, Y and Z, which were maintained by Taxpayer A at his death, as her own as of December 31, 1999;

10. that Taxpayer B's Code section 401(a)(9) required beginning date with respect to IRAs V, W,X, Y and Z, after said IRAs are treated as her own, was December 31, 2000;

11. that, with respect to IRAs V, W, X, Y, and Z, Taxpayer B, whose date of death was Date 4, 2000, died prior to her "required beginning date" as that term is defined in Code section 401(a)(9)(C); and

12. that, with respect to IRAs V, W, X, and Y, which are treated as Taxpayer B's own IRAs effective December 31, 1999, the estate of Taxpayer B may receive Code section 401(a)(9) minimum required distributions no later than December 31, 2005, pursuant to Code section 401(a)(9)(B)(ii), without being subject to the excise tax imposed by Code section 4974.

The answer to the 12th requested ruling (above) assumes that the estate of Taxpayer B is entitled to receive distributions from the IRAs referenced therein.

With respect to your 13th and 14th ruling requests, the issues presented are similar to those presented in your fourth and fifth ruling requests. Thus, with respect to your 13th and 14th ruling requests, the Service concludes as follows:

13. that, Code section 408(d)(3) is not applicable to the purported rollover of the proceeds of IRA Z, in the amount of Sum 1, into IRA S, an IRA maintained in the name of Taxpayer B, by Taxpayer C acting in her capacity

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of executrix of the estate of Taxpayer B. Thus, Code section 408(d)(3) does not prevent either Taxpayer B or the estate of Taxpayer B, as the case may be, from being taxed on said proceeds when they were distributed from IRA Z in accordance with the IRA taxation rules of Code section 408(d)(1); and

14. that the Service's unfavorable response to ruling request 13 is not precluded by the action of Taxpayer C, in her capacity of executrix of the estate of Taxpayer B, of creating IRA S, an IRA in the name of Taxpayer B, deceased, for the benefit of Taxpayer C, which IRA creation occurred within 60 days of the date of the distribution of Sum 1 from IRA Z to Taxpayer B.

With respect to your 15th through 17th ruling requests, the issues presented and law applicable thereto are the same as those presented with respect to your sixth through eighth ruling requests. Thus, with respect to your 15th through 17th ruling requests, the Service concludes as follows:

15. that, since the Internal Revenue Service has not issued favorable responses to letter ruling requests 13 and 14 (above), then, to the extent of the amounts originally distributed from IRA Z to Taxpayer B, and subsequently contributed to IRA S by Taxpayer C in her capacity of estate executrix as an attempted rollover, said amounts may be withdrawn from IRA S and not be subject to taxation as ordinary income under Code section 408(d)(1) pursuant to Code section 408(d)(4) as long as said withdrawal occurs within the time frame referenced in Code section 408(d)(4).

Please note that the Service's response to your 15th ruling request concluded that the excess contribution to IRA S will not be subject to Code section 408(d)(1) when distributed from IRA S as long as there is satisfaction of the requirements of Code section 408(d)(4). It does not conclude that these amounts were not subject to Code section 408(d)(1) when originally distributed from IRA Z.

16. since the Service has responded favorably to ruling request number 15 (above), then any amount withdrawn from IRA S that exceeds the amount originally contributed to IRA S as an attempted rollover will be taxable to the payee or distributee, as the case may be, as ordinary income pursuant to Code section 408(d)(1); and

17. although the Service has ruled favorably with respect to ruling request number 15 (above), if the amount distributed from IRA S attributable to the attempted rollover of the amount(s) originally distributed from IRA Z to Taxpayer B is less than the amount originally distributed from IRA Z, the difference may not be treated as a loss by the payee or distributee of IRA S as the case may be.

With respect to your 18th, and last, ruling request, as noted above, Code section 4973 provides, in relevant part, that amounts distributed from an IRA in accordance with

Code section 408(d)(4) do not constitute contributions as that term is used in Code section 4973.

Thus, with respect to your 18th ruling request, the Service concludes as follows:

18. that, if the amounts contributed to IRA S as an attempted rollover of amounts initially distributed from IRA Z to Taxpayer B, and earnings thereon, are withdrawn from IRA S no later than the due date of the calendar year 2000 Federal Income Tax Return (including extensions), then said contributed amounts will not be subject to the excise tax imposed by Code section 4973.

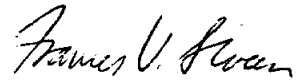
This ruling letter assumes that Taxpayer A's IRAs T through Z had met the requirements of Code section 408(a) at all times relevant thereto. It also assumes that the distribution which Taxpayer A received from his IRA X during calendar year 1999 did not satisfy Code section 401(a)(9) as your authorized representative has asserted.

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.

Please note that this letter ruling does not address the changes to sections 1.401(a)(9) and 1.408-8 of the proposed regulations which were published in the Federal Register on January 17, 2001.

Pursuant to a power of attorney on file in this office, a copy of this letter ruling is being sent to your authorized representative.

Sincerely yours,



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

Enclosures:

Deleted copy of letter ruling
Form 437