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

SEP 25 2001

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UICs: 408.02-01
408.03-00

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Company M:

IRA T:

IRA U:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Month 6:

Sum 1:

Court V:

County Y:

State Z:

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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 section 408(d) of the Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 1, 1944, died on Date 2, 2000, without having attained age 70 ½. Taxpayer A was survived by his wife, Taxpayer B, whose date of birth was Date 3, 1945. Pursuant to the will of Taxpayer A, Taxpayer B was named the sole executrix of Taxpayer A's estate. On or about Date 4, 2001, Taxpayer B was duly appointed by Court V, County Y, State Z, a court of competent jurisdiction, to act as the executrix of the estate of Taxpayer A.

The provisions of Taxpayer A's will provided, in relevant part, that after payment of Taxpayer A's debts and funeral expenses, 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 two individual retirement arrangements (IRAs), IRAs T and U with Company M. The estate of Taxpayer A was the beneficiary of his IRAs T and U.

On or about Date 5, 2001, Company M issued a check in the amount of Sum 1, which represented the balances in Taxpayer A's IRAs T and U, to Taxpayer B, as the executrix of the estate of Taxpayer A.

During Month 6, 2001, Taxpayer B rolled over Sum 1 into an individual retirement set up and maintained in her name.

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 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 pursuant to Code section 408(d)(3), Taxpayer B is not required to include, as income for Federal income tax purposes, the proceeds of IRAs T and U that were paid to the estate of Taxpayer A, then paid to Taxpayer B, since said proceeds were rolled over by Taxpayer B, as residuary beneficiary of the estate of Taxpayer A, into 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.

With respect to your ruling requests, 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, 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.

With respect to your 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 is the sole executrix of Taxpayer A's estate 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 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 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); and

2. that pursuant to Code section 408(d)(3), Taxpayer B is not required to include, as income for Federal income tax purposes, the proceeds of IRAs T and U that were paid to the estate of Taxpayer A, then paid to Taxpayer B since said proceeds were rolled over by Taxpayer B, as residuary beneficiary of the estate of Taxpayer A, into 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.

This ruling letter assumes that Taxpayer A's IRAs T and U had met the requirements of Code section 408(a) at all times relevant thereto. It also assumes that Taxpayer B's IRA meets the requirements of Code section 408(a) at all times relevant thereto.

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 that were published in the Federal Register on January 17, 2001.

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.

This letter ruling was written by of this Group whose ID number is:

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

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

Enclosures:

Deleted copy of letter ruling
Form 437