200228023

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JAN 15 2002

UIC: 9100.00-00

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

IRA X:

IRA Y:

IRA Z:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Sum 1:

Company M:

Company N:

Dear[redacted] :

This is in response to the , request for letter ruling 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 relating to the transaction described below. This letter revokes Private Letter Ruling (PLR) 200204048 dated October 31, 2001, and substitutes the following letter ruling. This letter also considers the correspondence submitted on your behalf by your authorized representative which clarified several facts relating to the PLR. The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 1, 1936, died on Date 2, 2000. As of the date of her death, Taxpayer A maintained IRA X with Company M. Taxpayer B, Taxpayer A's son, was the named beneficiary of IRA X. The date of death value of IRA X was Sum 1.

On or about Date 3, 2000, Taxpayer B received a distribution of the Sum 1 value in IRA X. Company M issued a calendar year 2000 Form 1099-R to Taxpayer B indicating that he had received a distribution in the amount of Sum 1 as the beneficiary of Taxpayer A's IRA X.

On or about Date 4, 2000, Taxpayer B rolled over a portion of said distribution into IRA Y, an individual retirement arrangement maintained with Company N. Documentation submitted with your ruling request indicates that IRA Y was designated a "Beneficiary IRA Rollover to be maintained for the benefit of Taxpayer B".

On or about Date 5, 2001, Taxpayer B rolled over the remaining portion of the Date 3, 2000 distribution from IRA X into IRA Z, an individual retirement arrangement maintained with Company M. Documentation which accompanied this ruling request indicated that IRA Z was created by means of a "Rollover Contribution".

IRAs Y and Z were set up using Taxpayer B's social security number.

Company M and Company N have assured Taxpayer B that they either have taken, or will take, all necessary steps to insure that the transactions described above do not result in their being treated as taxable distributions to Taxpayer B. With that regard, Companies M and N will, upon Taxpayer B's receipt of a favorable letter ruling, prospectively retitle IRAs Z and Y as IRAs maintained in the name of Taxpayer A. Companies M and N will also correct their bookkeeping entries, issue new Forms 1099 to Taxpayer B indicating that Taxpayer B did not realize income when he rolled over amounts into IRAs Z and Y, and will treat the transactions, described above, as trustee to

trustee transfers into IRAs maintained in the name of Taxpayer A for the benefit of Taxpayer B.

The actions referenced in the paragraph, immediately above, have not been taken even after the Service's issuance of PLR 200204048.

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

1. That the transactions described above, through which Sum 1 was distributed from IRA X and subsequently rolled over into IRAs Y and Z constitute transfers, as that term is used in Revenue Ruling 78-406;

2. that the transactions, described above, did not constitute taxable distributions when they occurred;

3. that the first transaction, described above, resulted in IRA Y retaining its status as an IRA maintained in the name of Taxpayer A for the benefit of Taxpayer B; and

4. that the second transaction, described above, resulted in IRA Z retaining its status as an IRA maintained in the name of Taxpayer A for the benefit of Taxpayer B;

5. assuming unfavorable responses to ruling requests 1-4 (above), pursuant to Code section 408(d)(4), excess amounts contributed to IRA Y may have been returned to Taxpayer B without Taxpayer B's having to take said amounts into income as long as any excess contribution was returned to Taxpayer B no later than the due date of Taxpayer B's calendar year 2000 Federal Income Tax Return (including extensions); and

6. assuming unfavorable responses to ruling requests 1-4 (above), pursuant to Code section 408(d)(4), excess amounts contributed to IRA Z may be returned to Taxpayer B without Taxpayer B's having to take said amounts into income as long as any excess contribution is returned to Taxpayer B no later than the due date of Taxpayer B's calendar year 2001 Federal Income Tax Return (including extensions).

With respect to your ruling requests, Code section 408(d)(1) provides, in general, that, except as otherwise provided in Code section 408(d), amounts distributed from an IRA are taxed to the distributee in accordance with the rules provided under section 72.

Code section 408(d)(3)(B) provides, in general, that paragraph 408(d)(3), which governs rollover contributions of distributions made from IRAs, does not apply to any amount described in subparagraph (A) (IRA distributions) 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 that subparagraph from an IRA that was not includible in his gross income because of the application of paragraph 408(d)(3).

Code section 408(d)(3)(C) provides, in general, that the rollover rules of Code section 408(d)(3) shall not apply to inherited IRAs. Code section 408(d)(3)(C)(ii) provides that an inherited IRA is an IRA acquired by an individual other than a surviving spouse by reason of the death of another individual (IRA owner).

Code section 219(b) sets down limitations applicable to yearly contributions by a taxpayer to an IRA (or IRAs).

Code section 4973(a) imposes a 6% excise tax on excess contributions to an IRA. Code section 4973(b) provides, in relevant part, that any contribution which is distributed from an individual retirement account or individual retirement annuity in a distribution described in Code section 408(d)(4) shall be treated as an amount not contributed.

Code section 408(d)(4) provides that paragraph (1) does not apply to the distribution of any contribution paid during a taxable year to an individual retirement account 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

Revenue Ruling 78-406, 1978-2 C.B. 157, provides, in general, that the direct transfer of funds from one IRA trustee to another IRA trustee does not result in such funds being treated as paid or distributed to the participant and such transfer is not a rollover contribution. The revenue ruling states that this conclusion would apply whether the bank trustee initiates or the IRA participant directs the transfer of funds.

Rev. Rul. 78-406 is applicable if the trustee to trustee transfer is directed by the beneficiary of an IRA after the death of the IRA owner as long as the transferee IRA is set up and maintained in the name of the deceased IRA owner for the benefit of the beneficiary.

Revenue Procedure 89-52, 1989-2 C.B. 632, provides guidance with respect to IRAs maintained for the benefit of non-spouse beneficiaries of deceased IRA holders.

As noted above, Taxpayer B, the named beneficiary of Taxpayer A's IRA X, received distributions of his interest in Taxpayer A's IRA X and subsequently rolled over said distributions into other IRAs set up and maintained for the benefit of Taxpayer B. The Service believes that said transactions were not in accordance with the guidelines found in Rev. Rul. 78-406, and did not comply with the requirements of Rev. Proc. 89-52. This conclusion recognizes the representations made that Companies M and N will take all necessary steps to characterize Taxpayer B's actions as trustee-to-trustee transfers. However, the transactions described herein constituted distributions and rollovers when made and cannot be recharacterized as trustee to trustee transfers as that term is used in Rev. Rul. 78-406. Thus, since Taxpayer B's actions were not in compliance with the requirements of Rev. Rul. 78-406, he did receive distributions, as that term is defined in Code section 408(d)(1), from IRA X. Thus, the restriction described in Code sections 408(d)(3)(C) does apply to Taxpayer B's actions.

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

1. That the transactions described above, through which Sum 1 was distributed from IRA X and subsequently rolled over into IRAs Y and Z did not constitute transfers, as that term is used in Revenue Ruling 78-406;

2. that the transactions, described above, did constitute taxable distributions when they occurred;

3. that the first transaction, described above, did not result in IRA Y retaining its status as an IRA maintained in the name of Taxpayer A for the benefit of Taxpayer B; and

4. that the second transaction, described above, did not result in IRA Z retaining its status as an IRA maintained in the name of Taxpayer A for the benefit of Taxpayer B.

With respect to your fifth and sixth ruling requests, as noted above, Taxpayer B contributed a portion of Sum 1 standing to his benefit in IRA X to IRA Y during calendar

year 2000, and contributed the remaining portion of Sum 1 to IRA Z during calendar year 2001. Each contribution exceeded the limitation found in Code section 219(b) and, thus, constituted an excess contribution to an IRA as that term is used in Code section 4973.

Code section 408(d)(4) permits a taxpayer to withdraw an excess contribution to an IRA by the due date of his return (including extensions) for the taxable year of contribution. Pursuant to Code section 408(d)(4), such withdrawal does not constitute a taxable distribution under Code section 408(d)(1). Such withdrawal must be accompanied by the income attributable to the excess contribution.

Thus, with respect to your fifth and sixth ruling requests, the Service concludes as follows:

5. assuming unfavorable responses to ruling requests 1-4 (above), pursuant to Code section 408(d)(4), excess amounts contributed to IRA Y may have been returned to Taxpayer B without Taxpayer B's having to take said distribution from IRA Y into income as long as any excess contribution was to IRA Y returned to Taxpayer B no later than the due date of Taxpayer B's calendar year 2000 Federal Income Tax Return (including extensions); and
6. assuming unfavorable responses to ruling requests 1-4 (above), pursuant to Code section 408(d)(4), excess amounts contributed to IRA Z may be returned to Taxpayer B without Taxpayer B's having to take said distribution from IRA Z into income as long as any excess contribution to IRA Z is returned to Taxpayer B no later than the due date of Taxpayer B's calendar year 2001 Federal Income Tax Return (including extensions).

The Service's responses to the fifth and sixth ruling requests indicate that as long as there is compliance with Code section 408(d)(4), amounts distributed to Taxpayer B from either IRA Y or IRA Z (or both IRAs) will not constitute taxable distributions as that term is used in Code section 408(d)(1). The responses do not conclude that Taxpayer B did not receive a taxable distribution from IRA X during calendar year 2000.

This ruling letter assumes that IRA X met 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.

This letter ruling is authorized by Larry Heben of this Group who can be reached at (202) 283-9618.

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
Manager,
Employee Plans
Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of letter ruling
Form 437